SUPREME COURT, U.S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 576)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 73

PHILLIPS PETROLEUM COMPANY, APPELLANT,

vs.

THE STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY.

No. 153

CITIES SERVICE GAS COMPANY, APPELLANT,

vs.

PEERLESS OIL AND GAS COMPANY, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED MAY 15, 1950.

JUNE 27, 1950.

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VOL. I

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[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32994

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff in Error, Respondent below,

vs.

PEERLESS OIL AND GAS COMPANY, a corporation, Defendant in Error, Applicant below,

and

ALL OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS IN THE STATE OF OKLAHOMA and Particularly in the Guymon-Hugoton Field, Also Defendants in Error, Respondents below,

and

THE STATE OF OKLAHOMA ON RELATION OF THE COMMISSIONERS OF THE LAND OFFICE of the State of Oklahoma, and The Texas County Land & Royalty Owners' Association, Defendants in Error, Interveners below

PETITION IN ERROR—Filed February 3, 1947

Comes now Cities Service Gas Company, Plaintiff in Error, Respondent below, and complains of the Corporation Commission of the State of Oklahoma, hereinafter called "Commission," Peerless Oil and Gas Company, Defendant in Error, Applicant below, and All Operators, Producers and Takers of Natural Gas in the State of Oklahoma and Particularly in the Guymon-Hugoton Field, Defendants in Error, Respondents below, and The State of Oklahoma on Relation of the Commissioners of the Land [fol. 2] Office of the State of Oklahoma, and The Texas County Land & Royalty Owners' Association, Defendants in Error, interveners below, and in this respect alleges and states:

1. On the 9th day of December, 1946, in Cause CD No. 1054, Order No. 19515, said Commission of the State of Oklahoma made, rendered and entered a judicial order

against said Plaintiff in Error whereby it purported to require Plaintiff in Error to take natural gas ratably from Peerless Oil and Gas Company's wells in accordance with the formula for ratable taking prescribed in Order No. 17867 of the Commission; that Cities Service Gas Company pay to Peerless Oil and Gas Company for the natural gas so taken not less than 7¢ per MCF of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch, and that no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, for a price at the wellhead of less than 7¢ per MCF of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch, said Order being made effective as of January 1, 1947.

2. On the 9th day of December, 1946, in Cause CD No. 1054, Order No. 19514, said Commission of the State of Oklahoma made, rendered and entered a legislative order or rule against said Plaintiff in Error and others, whereby it purported to require that no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price at the wellhead of less than 7¢ per MCF of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch, said Order being made effective as of January 1, 1947.

Plaintiff in Error in the judicial phase of said case, namely; that pertaining to Order No. 19515 in Cause CD No. 1054, supra, duly filed on the date said Order was rendered and entered its motion to set aside findings of fact, conclusions of law, and order therein, and substitute therefor certain findings of fact and conclusions of law requested by Plaintiff in Error and render judgment for [fol. 3] Plaintiff in Error, which motion was overruled. After the overruling of said motion Plaintiff in Error forthwith duly filed on said day its motion for a new trial in the judicial phase of said case, which motion was overruled on said day.

Plaintiff in Error being aggrieved by both orders, namely Nos. 19515 and 19514, in Cause CD No. 1054, did, on the 9th day of December, 1946, after the rendering and entry of said orders and the overruling of said motions, file and

announce in open court before said Commission its oral and written notice of intention to appeal to this court from all orders, judgments, decrees, rules, regulations, and final action of the Commission on the 9th day of December, 1946, both in the judicial phase and in the legislative phase of said case.

An original certified transcript of record made before the Corporation Commission in said case including, but not by way of limitation, all pleadings, objections, rulings, evidence, testimony, and exhibits, duly signed, certified, attested and filed, is hereto attached, marked Exhibit "A" and made a part of this Petition in Error, except that part eliminated by stipulation of parties hereto, and the said Plaintiff in Error avers that there is error in the said record and proceedings in the following particulars, to-wit:

(1) The Commission erred in overruling motion of Plaintiff in Error for a separate hearing in the judicial phase of the case; that is, that part relating to the private dispute between Plaintiff in Error and Defendant in Error, Peerless Oil and Gas Company, from the legislative phase of said case; that is, that part concerning the fixing of the price of [fol. 4] gas generally for the Guymon-Hugoton Field in Texas County, Oklahoma, and erred in overruling objections of Plaintiff in Error to a joint hearing on the said respective legislative and judicial issues as disclosed by the application of said Defendant in Error, Peerless Oil and Gas Company, and pleadings of parties, to all of which Plaintiff in Error duly excepted.

(2) The Commission erred in overruling motion of Plaintiff in Error to inform Plaintiff in Error in advance of the trial of said cause, in view of the recitations and facts disclosed in said motion, the rules of evidence, practice and procedure which the Commission would apply at the hearing of said case.

(3) The Commission erred in assuming jurisdiction of the application of Defendant in Error, Peerless Oil and Gas Company, to require Plaintiff in Error to take and purchase gas from Defendant in Error, Peerless Oil and Gas Company, at a price and upon terms and conditions to be fixed by the Commission.

(4) The Commission erred in assuming jurisdiction of the application of Peerless Oil and Gas Company to fix the price of gas generally for the Guymon-Hugoton Field in Texas County, Oklahoma.

(5) The Commission erred in overruling Plaintiff in Error's motion to allow inspection and copy or permission to take copy of certain documents, instruments and papers in possession of Defendant in Error, Peerless Oil and Gas Company, material to the trial of said case.

[fol. 5] (6) The Commission erred in the trial of said cause in admitting incompetent, irrelevant and immaterial evidence over the objection of Plaintiff in Error, to which it duly excepted.

(7) The Commission erred in refusing to admit in evidence on behalf of Plaintiff in Error competent, relevant and material testimony and evidence which it duly offered, and erred in limiting cross-examination of certain witnesses by Plaintiff in Error, to all of which rulings Plaintiff in Error duly excepted.

(8) The Commission erred in overruling motion of Plaintiff in Error to segregate and separate the combined and commingled evidence admitted and received by the Commission on behalf of Peerless Oil and Gas Company and Interveners over the objection of Plaintiff in Error so that Plaintiff in Error could know what evidence pertained to the judicial phase of said case and what evidence pertained to the legislative phase of said case, in order to enable Plaintiff in Error to properly present its evidence in answer to and in rebuttal of the evidence of Peerless Oil and Gas Company and said Interveners.

(9) The Commission erred in allowing the State of Oklahoma on Relation of the Commissioners of the Land Office and the Texas County Land & Royalty Owners' Association to interfere as if in intervention in said proceeding, including the judicial phase thereof, over objection of Plaintiff in Error, which was duly excepted to.

[fol. 6] (10) The Commission erred in allowing the State of Oklahoma on Relation of the Commissioners of the Land Office to intervene and file petition in intervention in said proceeding, including the judicial phase thereof, without

giving Plaintiff in Error an opportunity to be present and object prior to allowing said petition in intervention, all of which was done over the objection of Plaintiff in Error and duly excepted to.

(11) Said Commission erred in overruling each of the following: (a) Demurrer to the evidence, (b) motion to dismiss, and (c) motion for judgment on the pleadings and evidence of Defendant in Error in the judicial phase of said case: that is, in the private dispute between Peerless Oil and Gas Company and Cities Service Gas Company, all of which was duly excepted to by Plaintiff in Error.

(12) Said Commission erred in overruling the combined demurrer, motion to dismiss, and motion for judgment on the pleadings and evidence of Defendant in Error in the legislative phase of said case.

(13) Said Commission erred in overruling Plaintiff in Error's motion to dismiss the judicial phase of Peerless Oil and Gas Company's application and case because of the voluntary and binding written stipulation between Peerless Oil and Gas Company and Cities Service Gas Company for ratable taking of gas by Cities Service Gas Company from wells of Peerless Oil and Gas Company.

[fol. 7] (14) The Commission erred in not rendering judgment for Plaintiff in Error under the evidence adduced, both in the judicial and legislative phases of said case.

(15) The Commission erred in not making proper findings of fact and conclusions of law based on competent evidence in the judicial phase of said case after sustaining a motion requesting such findings and conclusions.

(16) The Commission erred in denying Plaintiff in Error's motion to set aside findings of fact and conclusions of law and to substitute therefor certain findings of fact and conclusions of law in the judicial phase of said case requested by Plaintiff in Error, and to render judgment on such substituted findings of fact and conclusions of law for Plaintiff in Error, or, notwithstanding a denial of said request for substituted findings of fact and conclusions of law by Plaintiff in Error, to render judgment for Plaintiff in Error in the judicial phase of said case; namely, the private dispute between Plaintiff in Error and Defendant

in Error, to all of which the Plaintiff in Error duly excepted.

(17) The Commission erred in denying Plaintiff in Error's motion for new trial in the judicial phase of said case; that is, the private dispute between Peerless Oil and Gas Company and Cities Service Gas Company, to which ruling the Plaintiff in Error duly excepted.

(18) The Commission erred in its final orders in making findings of fact and conclusions of law wholly unsupported by any competent, legal evidence, and contrary to [fol. 8] such evidence, to which findings of fact and conclusions of law Plaintiff in Error duly excepted.

(19) The Commission erred in the final action taken by it in assuming authority and jurisdiction to grant not only the relief requested by Peerless Oil and Gas Company in its said application in both the legislative and judicial phases of said case, but also erred in including in said final action taken matters not set forth in the application of Peerless Oil and Gas Company or in any of the petitions in intervention of the various interveners, all of which was without legal, constitutional or statutory authority and duly excepted to by Plaintiff in Error.

(20) The Commission erred: (a) In not granting Plaintiff in Error a fair and impartial hearing and trial; (b) in its rulings made during the course of the trial; (c) in allowing its attorney Floyd Green to participate and take an active part in the hearing of private judicial dispute between Defendant in Error and Plaintiff in Error; (d) in prejudging the case as disclosed by a consideration of the whole record, and (e) in denying and rejecting the legal, constitutional and statutory objections and defenses pleaded in Plaintiff in Error's answer covering authority and jurisdiction of Commission in the premises.

Wherefore, Plaintiff in Error prays that said judgments, final action, decrees, rules, regulations, decisions and orders of said Commission so rendered and entered on the 9th day of December, 1946, in both the judicial and legislative phases of said case be reversed, set aside, and held for naught and [fol. 9] judgment be rendered in favor of Plaintiff in Error and against all Defendants in Error, including Peerless Oil

and Gas Company, upon the pleadings, stipulation, evidence and facts disclosed by the original certified transcript of record attached and made a part of this Petition in Error, and that Plaintiff in Error be restored to all its rights and privileges that it has lost by the rendition and entry of such orders, judgments, rules, decisions, regulations, and final action by the Commission, and for such other and further relief as Plaintiff in Error may be entitled to under the law and justice.

Cities Service Gas Company, by Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Its Attorneys, First National Bldg., Okla. City, Okla.

[fols. 10-11] (Acknowledgments of service omitted in printing.)

[fol. 12] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32994

[Title omitted]

PETITION IN ERROR OF DEFENDANT IN ERROR PHILLIPS PETROLEUM COMPANY—Filed February 7, 1947

Comes now Phillips Petroleum Company, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, and for that reason named herein as a defendant in error, and complains of the Corporation Commission of the State of Oklahoma (hereinafter called "the Commission") and the other defendants in error hereinabove [fol. 13] named, on account and because of the orders complained of by plaintiff in error, Cities Service Gas Company, in its Petition in Error filed herein, namely, Order No. 19514 and Order No. 19515 made and entered by the Commission December 9, 1946, in Cause C. D. No. 1054, then pending before the Commission, wherein and whereby the Commission, upon application of defendant in error, Peerless Oil and Gas Company, and the petitions of intervention of the defendants in error, the State of Oklahoma on

Relation of the Commissioners of the Land Office of the State of Oklahoma and The Texas County Land and Royalty Owners Association, ordered that, effective from and after January 1, 1947, "no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, for a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas, measured at a pressure of 14.65 pounds absolute pressure per square inch".

A full, true and complete copy of each of said Orders so complained of are hereto attached and made a part of this Petition in Error.

An original and complete transcript of the record of the proceedings before the Commission and of the evidence upon which said Orders No. 19514 and No. 19515 of the Commission were based, except only the parts thereof omitted as immaterial by stipulation of the parties, duly certified to by the Commission, is attached to and on file in this cause as a part of the Petition in Error of said Plaintiff in error, Cities Service Gas Company, and by [fol. 14] reference is made a part of this Petition in Error.

Defendant in error, Phillips Petroleum Company, avers that the Commission erred in making and entering said Orders No. 19514 and No. 19515 for the reasons and upon the grounds:

1. That the Commission was without jurisdiction to enter said Orders No. 19514 and No. 19515 in so far as they may relate or purport to the plaintiff in error.

2. That no proper application was filed with the Commission for the making of said Orders No. 19514 and No. 19515.

3. That no proper or legal notice of the filing of the applications in said Cause C. D. No. 1054 and upon which said Orders No. 19514 and No. 19515 purport to have been based or of the hearings on said application was given to or served on plaintiff in error.

4. That no proper hearing was held by the Commission upon the purported applications pursuant to which said Orders No. 19514 and No. 19515 were entered.

5. That said Orders No. 19514 and No. 19515 in so far as they purport to relate to this plaintiff in error are not reasonably supported by an competent evidence.

[fol. 15] 6. That said Orders No. 19514 and No. 19515, in so far as they purport to relate to plaintiff in error, are contrary to the evidence.

7. That the findings of the Commission contained in said Orders No. 19514 and No. 19515 are inadequate in law and insufficient upon which to base said orders.

8. That said Orders No. 19514 and No. 19515, as applied to plaintiff in error, are unreasonable, unjust, arbitrary and capricious and, if enforced, will result in the confiscation of property of plaintiff in error.

9. That the Commission was without authority of law to make and enter said Orders No. 19514 and No. 19515.

10. That the Commission is without power to restrict the production of gas conditioned upon the amount which the producer receives for the same where the gas is sold at the well in its natural state.

11. That the Commission is without power to restrict the production of gas conditioned upon the receipt of a specified price therefor at the well where the gas is not sold at the well or where the gas is not sold in its natural state.

12. That the Commission is without power to restrict the production of gas conditioned upon the receipt of a specified price therefor at the well when the gas [fol. 16] is not sold but is used by the producer.

13. That said Orders No. 19514 and No. 19515 are ambiguous in that it cannot be determined from said orders what is meant by the term "At a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas", where the gas is not sold at the wellhead or where the gas is not sold in its natural state or where the gas is used by the producer.

14. If said Orders No. 19514 and No. 19515 are intended to apply to a producer who does not sell the gas produced at the wellhead, but gathers and sells the gas at a point other than the wellhead or otherwise uses the gas, the orders fail to specify any formula whereby it can be determined whether such gas is taken out of the producing structures or formations "At a price, at the wellhead, of less than 7¢ per thousand cubic feet".

15. That said Orders No. 19514 and No. 19515 or any statute or statutes which purport to authorize such orders, as applied to plaintiff in error, violate Sections 7 and 15 of Art. II of the Oklahoma Constitution and Section 8 and 10 of Art. I, and the 5th and 14th Amendments of the Constitution of the United States.

[fol. 17] 16. That said Orders No. 19514 and No. 19515 will not result in the prevention of waste, either physical or economic, and will not result in a greater recovery of gas from the Guymon-Hugoton Field, and will not protect the correlative rights of the several producers and owners in said field, but, on the contrary, said orders will result in great and irreparable physical and economic waste and in the violation of the correlative rights of the producers and royalty owners in said Guymon-Hugoton Field.

Wherefore, defendant in error, Phillips Petroleum Company, prays that upon the consideration of this cause that said Orders No. 19514 and No. 19515 be reversed, set aside and held for naught in so far as they may relate to this defendant in error, Phillips Petroleum Company, and that said defendant in error, Phillips Petroleum Company, be restored to all rights and privileges that it has lost by the entry and rendition of said orders herein complained of, and for such other and further relief as to the court may seem just and proper.

Phillips Petroleum Company, by Don Emery, Rayburn L. Foster, R. B. F. Hummer, R. M. Williams, Its Attorneys.

Harry D. Turner.

[fol. 18] EXHIBIT TO PETITION IN ERROR

Before the Corporation Commission of the State of Oklahoma

Cause CD No. 1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, and All Operators Producers and Takers of Natural Gas in the State of Oklahoma, and Particularly in the Guymon-Hugoton Field, Respondents;

THE SCHOOL LAND COMMISSION of the State of Oklahoma, and Texas County Land & Royalty Owners Association, Interveners

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma on the 26th day of November 1945, at 10:00 o'clock a. m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas County Land and Royalty Owners, Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association ap-
[fol. 19] pearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said

parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

Findings

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized it transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing order and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

[fol. 20] 4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Grider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probably productive area of the Guymon-Hugoton pool in Texas County, Oklahoma covers part of the following described townships, to-wit:

Townships:		Ranges
1	North	12 to 17 E. C. M
1, 2, 3 and 4	North	12 to 18 E. C. M.
5 and 6	North and North	12 to 19 E. C. M.

which area may be extended by the drilling of additional wells.

5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases includes leases covering

Secton 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma and

Section 5, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in [fol. 21] the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchased natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe line for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

[fol. 22] 14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton Oklahoma gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of *Oklahoma Natural Gas Comapny vs. State*, 161 Okla. 104, 17 Pac. (2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the respondent, Cities Service Gas Company, constitutes it a transporter of natural gas.

[fol. 23] 20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Sections 5 and 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Sections 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said lease. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the file to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected

to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company [fol. 24] would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the well-head plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controvery in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such Order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon Hugoton Oklahoma gas field own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

24. There is no competitive market of natural gas in the Guymon-Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets [fol. 25] by the pipeline Operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton Oklahoma Gas Field at a price for less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the

Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers under contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company constitute it a common carrier.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

[fol. 26] 32. The taking of natural gas from the Guymon-Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the -or- of gross production taxes.

(e) Inequitable taking of natural gas from the common source of supply involved.

(f) Distrimination against various producers in the field.

33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

[fol. 27] ORDER

It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a presure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

Done and Performed by the Corporation Commission at its office in the Capitol office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary.

Certificate to foregoing paper omitted in printing.

[fol. 28] EXHIBIT TO PETITION IN ERROR

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054

Order No. 19515

PEERLESS OIL & GAS COMPANY, a Corporation, Applicant

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10 o'clock, a. m., on the application of Peerless Oil & Gas Company, a corporation, as to the issues involved between the applicant and respondent, Cities Service Gas Company, pursuant to order of the Commission setting the cause for hearing and notice published as required by law and personally served upon Cities Service Gas Company, a corporation. The applicant appearing by and through Earl Pruet, its attorney, and the respondent, Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr.; and the Commission was represented by Floyd Green, Conservation Attorney; and said parties having announced ready for trial, the applicant presented its evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Now on this 9th day of December, 1946, the Commission having considered the matter in conference and each of the [fol. 29] Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

You are the owner of a pipe line located approximately two and one half miles Southwest of said well drilled and owned by Peerless Oil and Gas Company as aforesaid, said pipe line crossing Section 13, Township 4 North, Range 15 E. C. M., Texas County, Oklahoma.

You are hereby notified that pursuant to the Statutes of the State of Oklahoma and orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, the undersigned hereby tenders to you the gas to be produced by the undersigned from its said well, situated in Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, and that the undersigned will deliver and sell the same to you in accordance with the provisions of the statutes of the State of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, at the price of six cents per thousand cubic feet, but in the event of failure to agree upon a price, at such price as may be fixed by the Corporation Commission of the State of Oklahoma.

The natural gas to be produced by Peerless Oil and Gas Company from its said well situated in said Section 8, will be delivered to you at some reasonable point, which the [fol. 76] undersigned considers to be at the mouth of its said well, provided, if point of delivery cannot be agreed upon, same shall be determined and fixed by the Corporation Commission of the State of Oklahoma.

It is understood and the undersigned hereby expressly agrees that it will do and perform all things and bear all expense required of it by the Statutes of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma governing such sale, purchase and delivery.

Peerless Oil and Gas Company hereby demands that you produce natural gas from your wells located in the Hugoton, Oklahoma Gas Field ratable with said well of Peerless Oil and Gas Company and that you take and purchase natural gas from said Peerless Oil and Gas Company's wells ratable with your own wells in said field.

Yours very truly, Peerless Oil and Gas Company,
by ——, Its Attorney.

EP/e

[fol. 77] EXHIBIT "B" TO APPLICATION

June 14, 1945.

Registered Mail.
Return Receipt Requested.

Cities Service Gas Company, First National Building, Oklahoma City 2, Oklahoma

Re: Peerless Oil and Gas Company, Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma

GENTLEMEN:

Peerless Oil and Gas Company is the owner *or* oil and gas leases covering Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

Peerless Oil and Gas Company has drilled a well for the production of gas located in the approximate center of said section, which said well has been completed, equipped and is now ready for production.

You are now engaged in producing natural gas from the Hugoton, Oklahoma, gas field and in taking such gas from said field for purposes other than that of developing a gas or oil field, operating oil wells or for your own domestic use.

You are also engaged in the transportation of natural gas in the Hugoton, Oklahoma, Gas Field for compensation, hire and otherwise and are a common purchaser within the definition of the laws of the State of Oklahoma.

You are now taking natural gas from the common reservoir into which said well drilled and owned by Peerless [fol. 78] Oil and Gas Company has been drilled.

You are the owner of a pipe line located approximately two and one-half miles southwest of said well drilled and owned by Peerless Oil and Gas Company as aforesaid, said pipe line crossing Section 13, Township 4 North, Range 15 E.C.M., Texas County, Oklahoma.

[fol. 79] You are hereby notified that pursuant to the Statutes of the State of Oklahoma and orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto the undersigned hereby tenders to you the gas to be produced by the undersigned from its said well, situated in Section 14 Township 6 North, Range 15 E.C.M., Texas County, Oklahoma and that the undersigned

will deliver and sell the same to you in accordance with the provisions of the Statutes of the State of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, at the price of six cents per thousand cubic feet, but in the event of failure to agree upon a price, at such price as may be fixed by the Corporation Commission of the State of Oklahoma.

The natural gas to be produced by Peerless Oil and Gas Company from its said well situated in said Section 8, will be delivered to you at some reasonable point, which the undersigned considers to be at the time of its said well, provided if point of delivery cannot be agreed upon, same shall be determined and fixed by the Corporation Commission of the State of Oklahoma.

It is understood and the undersigned hereby expressly agrees that it will do and perform all things and bear all expenses required of it by the Statutes of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma governing such sale, purchase and delivery. [fols. 80-81] Peerless Oil and Gas Company hereby demands that you produce natural gas from your wells located in the Hugoton, Oklahoma, Gas Field ratably with said well of Peerless Oil and Gas Company and that you take and purchase natural gas from said Peerless Oil and Gas Company's wells ratably with your own wells in said field.

Yours very truly, Peerless Oil and Gas Company,
by ——, Its Attorney.

EP/LC

[File endorsement omitted.]

[fol. 82] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

[Title omitted]

ORDER SETTING CAUSE FOR HEARING—Filed October 18, 1945

Now on this the 18th day of October, 1945, the Corporation Commission of Oklahoma being in Executive Session, there comes on for discussion the application filed herein by the Peerless Oil and Gas Company, a corporation, for an order requiring the Cities Service Gas Company, a

corporation, to connect its pipe lines and take gas from a well owned by the Peerless Oil and Gas Company, a Corporation, and located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, and for further order fixing the price to be paid by the Cities Service Gas Company, a Corporation, for the gas taken from said well, and to fix the price at which all gas in the Hugoton Field must be sold.

It appears that this is a matter of public interest and that the same should be set for public hearing.

ORDER

It is, therefore, ordered that this cause be and the same is hereby set for hearing in the Commission's Court Room, [fols. 83-84] Capitol Office Building, Oklahoma City, Oklahoma on the 26th day of November, 1945 at 10 o'clock, A. M., and that notice thereof be published as required by law.

Done and Performed this the 18th day of October, 1945.

Corporation Commission of Oklahoma, s/Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, W. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 85] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

[Title omitted]

NOTICE OF HEARING—Filed Oct. 18, 1945

To All Operators, Purchasers and Takers of Natural Gas in the State of Oklahoma and Particularly in the Guymon-Hugoton Field:

Notice is hereby given that the Corporation Commission of Oklahoma will hold a hearing in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma on the 26th day of November, 1945, at 10 o'clock A. M., upon the application of the Peerless Oil and Gas Company, a corporation, for an order directing the Cities Service Gas Company, a

corporation, to furnish a connection and to purchase gas from a well owned by the Peerless Oil and Gas Company, a corporation, and located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

The Peerless Oil and Gas Company, a corporation, further prays that an order be issued fixing the price to be paid for such gas purchased by the Cities Service Gas Company, a corporation, from the Peerless Oil and Gas Company, a corporation, at the well located in said section.

[fols. 86-87] The Peerless Oil and Gas Company further prays that the Corporation Commission issue an order fixing the price of natural gas at the well head in the Guymon-Hugoton Field, or the price at which natural gas may be sold at the well head in said field.

All persons interested in such matter may appear on said date and be heard.

Done and performed this the 18th day of October, 1945.

Corporation Commission of Oklahoma. s/Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, W. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fols. 88-89] (Proof of service of application, order and notice omitted in printing.)

[fol. 90] Thereafter was filed in said cause affidavit of publication by the Oklahoma County Register, and affidavit of publication by the Panhandle News Herald, which affidavits are respectively as follows:

[fol. 91] EXHIBIT No. 3

AFFIDAVIT OF PUBLICATION

STATE OF OKLAHOMA,
Oklahoma County, ss:

Caroline Dalton, of lawful age, being duly sworn on oath, deposes and says: That she is the Clerk of The Oklahoma

County Register, a newspaper of general circulation in the State of Oklahoma and printed at Oklahoma City, Oklahoma. That the attached notice was published in all regular editions of said newspaper on the following dates: 10-25-45.

(S.) Caroline Dalton.

Subscribed and sworn to before me this 25 day of Oct., 1945. (S.) Pauline Jennings, Notary Public. My Commission expires 9-14-46. (Seal.)
Publisher's fee $5.40.

[fols. 92-93] (Copy of notice omitted in printing.)

[fol. 94] EXHIBIT No. 2

IN THE —— COURT OF TEXAS COUNTY, STATE OF OKLAHOMA

Cause C. D. N. 1054

PEERLESS OIL AND GAS COMPANY, Applicant, a Corporation,

vs.

CITIES SERVICE GAS COMPANY, Respondent, a Corporation

AFFIDAVIT OF PUBLICATION

STATE OF OKLAHOMA,
Texas County, ss:

Giles E. Miller, of lawful age, first being duly sworn, upon oath, says: That he is the manager of The Panhandle News-Herald, a weekly newspaper, published and printed in Texas County, Oklahoma. That said Panhandle News-Herald has a paid circulation in Texas County, Oklahoma, with entrance into the United States mails as Second class mail matter and published in the county where delivered to the United States Mail and said newspaper has been continuously and uninterruptedly published in said Texas County during a period of one hundred and four weeks consecutively prior to the date, on which the notice herein referred to was first published, and a notice of which a true copy is hereto attached, was published in a regular and entire edition of said Panhandle News-Herald and not in a

supplement thereof, for one (1) consecutive weeks, the first publication being on the 25th day of October, 1945, and the [fol. 95] last day of publication being on the — day of ——, 194—.

That said newspaper is printed in the English language.

Affiant further states, that this legal notice, advertisement, or publication, published in the Panhandle News-Herald comes within all the prescriptions and requirements of House Bill 327 of the 1941 Session Laws of Oklahoma.

Giles E. Miller, Manager.

Publishing Fee $6.00.

Subscribed and sworn to before me this 26th day of October, 1945. Janes Jygkum, Notary Public. My Commission expires Jan. 24, 1947. (Seal.)

[fols. 96-98] (Copy of notice omitted in printing.)

[fol. 99] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—Filed November 28, 1945

This cause came on for hearing before the Corporation Commission of Oklahoma on the 26th day of November, 1945 at 10 o'clock A.M. Upon the cause being called for trial, it was announced by Floyd Green, Conservation Attorney, that the attorneys for the applicant, Peerless Oil and Gas Company, a corporation, and for the respondent, Cities Service Gas Company, a corporation, had agreed that the cause might be continued until January 21, and 22, 1946. The Commission is of the opinion that the agreement should be respected.

Order

It is, therefore, ordered that this cause be and the same is hereby continued from November 26, 1945, to January 21 and 22, 1946 hearings to begin at 10 o'clock A.M., and that same be heard in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma.

[fols. 100-101] Done and performed this the 28th day of November, 1945.

Corporation Commission of Oklahoma. (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; W. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 102] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—Filed January 23, 1946

This cause came on for hearing before the Corporation Commission of Oklahoma on the 21st day of January, 1946, at 10 o'clock, A.M. Upon the cause being called for hearing, it was announced by Floyd Green, Conservation Attorney, that the attorneys for the applicant, Peerless Oil and Gas Company, a corporation, and for the respondent, Cities Service Gas Company, a corporation, had agreed that the cause might be continued until February 18th and 19th, 1946. The Commission is of the opinion that the agreement should be respected.

ORDER

It is therefore ordered that this cause be and the same is hereby continued from January 21, 1946 to February 18 and 19, 1946, the hearings to begin at 10 o'clock, A.M., February 18, and that same be heard in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma.

Done and performed this the 23rd day of January, 1946.

[fols. 103-104] Corporation Commission of Oklahoma. (S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 105] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—Filed February 19, 1946

This cause came on for hearing before the Corporation Commission of Oklahoma on the 18th day of January, 1946, at 10 o'clock, a.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma. Upon the cause being called for hearing, it was announced by Floyd Green, Conservation Attorney, that the attorneys for the applicant and the respondent had agreed that the cause might be continued until April 15, 16 and 17th, 1946.

ORDER

It is therefore ordered that this cause be and the same is hereby continued from February 18, 1946 to April 15, 16 and 17, 1946, the hearings to begin at 10 o'clock a.m., April 15, and that same be heard in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma.

Done and performed this the 19th day of February, 1946.

[fols. 106-107] Corporation Commission of Oklahoma.
(S.) Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; W. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 108] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION—Filed March 28, 1946

Comes now Respondent, Cities Service Gas Company, and by reason of the fact that—

(a) the hearing before this Commission to fix the price of gas and other terms of purchase and/or taking thereof as between Applicant and Respondent is judicial in character;

(b) the Commission in the hearing thereof sits in a judicial or quasi judicial capacity;

(c) the Attorney for Commission has advised respondent that the general rules of Practice and Procedure promulgated and adopted by Commission on January 24, 1945 are not applicable to a hearing for the determination of such issue;

(d) the Statutes of Oklahoma prescribe no rules of practice or procedure for the hearing to determine such issue as presented by the application of Peerless Oil and Gas Company, and

(e) Respondent is in grave doubt as to what rules of practice and procedure will be applied by the Com-
[fols. 109-110] mission in the hearing and determination of said issue,

moves the commission, in advance of the hearing of the application of Peerless Oil and Gas Company to fix the price of gas and other terms of purchase and/or taking thereof as between Applicant and Respondent, to advise Respondent what rules of practice and procedure, if any, will be applied by the Commission at the hearing of said application and in determining the issue presented thereby as between Applicant and Respondent.

Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

[File endorsement omitted.]

[fols. 111-112] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—Filed April 17, 1946

This cause came on for hearing before the Corporation Commission of Oklahoma on the 15th day of April, 1946, in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma. Upon the cause being called for hearing it was announced by Floyd Green, Conservation

Attorney, that the attorneys for the interested parties had agreed that the cause be continued from April 15th to May 6, 7, 8, 1946 and the Commission is of the opinion that the agreement should be respected.

ORDER

It is therefore ordered that this cause be and the same is hereby continued from April 15th, 1946 to May 6, 7, 8, 1946, to begin May 6th, at 10 o'clock a. m. in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma.

Done and Performed this the 17th day of April, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; W. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 113] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ANSWER OF RESPONDENT, CITIES SERVICE GAS COMPANY— Filed May 6, 1946

Comes now Cities Service Gas Company, Respondent herein and for separate answer to the application heretofore filed by Peerless Oil and Gas Company in this proceeding, and without waiving any of its separate defenses as hereinafter set forth, say:

I

Respondent for its separate answer to that part of the Application of Peerless Oil and Gas Company concerning the purported dispute between Applicant and Respondent over the taking and/or purchase of gas and the price and other terms of taking and/or purchase thereof, joined in this Answer for convenience only, states:

(1) Respondent is a natural gas company engaged generally in the business of producing natural gas for trans-

portation and sale in interstate commerce for resale by [fol. 114] means of an integrated pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Missouri and Nebraska. Through said pipe line system and facilities Respondent transports and sells in interstate commerce natural gas in varying quantities and amounts depending upon season and demand therefor, ranging at the present time from about 300,000 M.C.F. per day in the hottest weather to about 600,000 M.C.F. per day in the coldest weather, all of such gas being transported and sold in interstate commerce except an inconsequential amount thereof.

(2) That natural gas in most instances cannot be stored like other mineral products or handled like other commodities but must be taken directly from the producing wells and delivered by pipe line to the consumer at distant markets and constitutes a hazardous and difficult enterprise. Respondent, through diligence, foresight, and the expenditure of large sums of money, has provided itself with the necessary gathering lines, pipe lines, compressor stations and other essential facilities to transport its gas to the distant private markets it has acquired, which markets are vital to the efficient and successful operation of Respondent's interstate business. The pipe line system and facilities of Respondent in Texas County, Oklahoma have been designed, constructed and installed at great expense to it for the sole use and benefit of Respondent in supplying its private interstate markets acquired by it through—?

[fol. 115] (3) Respondent further states that the business of producing natural gas for transportation and sale in interstate commerce as conducted by it is a purely private business. Respondent does not now hold itself out and never has held itself out as a natural gas company ready, able or willing to serve the public generally; that it has always conducted and does now conduct all of its business, in so far as it pertains to the factual situation involved in this case, under private written contract with selected parties; that Respondent is not now and never has been a common purchaser or common carrier of natural gas under any law of the United States, the State of Oklahoma, or any other state, nor has it ever held itself out as ready, able or willing to serve the public generally in such a capacity; that Re-

spondent in carrying on its interstate operations has to a limited extent under exceptional circumstances and by private contract with selected Sellers purchased some natural gas for the sole purpose of enabling Respondent to supply adequately the private markets it has by its own diligence, foresight, and financial expense provided and acquired.

(4) That while Respondent is now legally rightfully or morally required under any valid law of this state or valid rule, order, or regulation of this Commission to take, purchase, or transport and carry the natural gas of Applicant or any other party, as is more fully and particularly explained hereafter in this Answer, Respondent has volun- [fol. 116] tarily offered, and does now offer, to take and purchase gas equitably from the well of Applicant ratably as nearly as may be reasonably possible with other wells in the Guymon-Hugoton Gas Field to which its well-gathering lines are connected and/or from such wells that deliver gas to it by means of other producers' pipe lines through the medium of Pipe Line Delivery Gas Purchase Contracts, and in harmony with the subsisting General Order No. 17867 of this Commission governing the purchasing and taking of gas in said field and in accordance with the prevailing and accepted practices of the industry applicable to the Guymon-Hugoton Gas Field; that in connection with the equitable taking and purchasing of such gas, Respondent states that it is essential to the efficient operation of Respondent's interstate business that all gas taken and purchased be delivered at the intake of its compressor station or at such other points designated by Respondent as well not interfer- with, impede, or impair the efficient operation of its said private interstate business.

(5) Notwithstanding the voluntary offer of Respondent as aforesaid, which it deems to be fair, equitable and reasonable in harmony with the subsisting order of the Commission and the prevailing and accepted practices of the gas industry, Applicant has demanded, and is now demanding as disclosed by its said application that Respondent unjustly discriminate in its favor and against other Sellers in the field from which it purchases, in specific violation of the subsisting Order No. 17867 of this Commission, and [fol. 117] particularly Section 9 thereof reading as follows:

"All purchasers, takers and producers of gas in the pool shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the locations to wells established by this order."

(6) Applicant, as disclosed by the contents of its said application bases its grounds for relief upon, and seeks the enforcement by this Commission of, the provisions of Section 3, Chapter 198 of the Laws of 1913, the same being 52 O.S. 1941 233, in that Applicant alleges that Respondent has indicated a willingness to purchase ratably from the well of Applicant with other wells in the field but the parties cannot agree upon the price or other terms of purchase. This Commission by its Order No. 17867 governing the Guymon-Hugoton Gas Field and particularly Section [fol. 118] 9 of said Order, as above set forth, requires that all purchasers of gas in the pool comply with the common purchaser statutes of the state by equitably purchasing all the gas without discrimination in favor of one producer as against another. In interpreting the statute relied upon by Applicant in this case, this Commission in the case of Peerless Oil and Gas Company vs. Republic Natural Gas Company, Cause C.D. No. 902, Order No. 17463, recently stated on page 4 of the Order:

"It will be observed that in the 1913 law the Corporation Commission was given power to fix the terms of the ratable taking of gas, not only as to the price of the gas, if there was a disagreement but also as to the other terms under which it should be taken. This statute has never been directly interpreted by any court, but its language seems clear that the Corporation Commission has the power to fix the terms. As stated above, it is a statute requiring ratable production of gas. *It in no way pertains to the market demand, to common*

purchaser, or common carrier but is a statute requiring ratable taking of gas in a gas field, and gives the Corporation Commission, among other things, the power to fix the terms. Certainly this would include the power to require ratable taking."

[fol. 119] It is therefore specifically noted that the 1913 Statute above referred to as interpreted by the Commission does not pertain to common purchaser, and the Commission by Section 9 of its Guymon-Hugoton Order excludes any other statute of Oklahoma relating to the purchase of gas in the Guymon-Hugoton Field by expressly requiring that all purchasers comply with the common purchaser statute and, the two acts being in conflict with each other, the common purchaser acts prevail as provided by this Commission in its Guymon-Hugoton Order.

(7) Further answering herein, Respondent denies, each, every and all other allegations, matters, averments and things contained in said application, and specifically denies the service upon it of any tender and demand, as referred to by Peerless Oil and Gas Company in its said application.

(8) For further answer and additional defense herein, Respondent says that the Congress of the United States, under the powers granted to it by the commerce clause of the Constitution of the United States of America; namely, clause 3 Section 8, of Article I thereof, did on or about June 21, 1938 enact the "Natural Gas Act," which act was approved by the President on June 21, 1938, and immediately thereafter became operative as a law of the United States (15 U.S.C.A. 717). Under the provisions of this law, the Federal Power Commission is given jurisdiction over the transportation of natural gas in interstate [fol. 120] commerce, the sale in interstate commerce of natural gas for resale, and of natural gas companies engaged in such transportation and sale; that under said law Respondent is a natural gas company and is being regulated by, or subject to being regulated by, the Federal Power Commission in all Transactions and matters which are within the ambit of Congressional delegation of power to the Federal Power Commission under the Natural Gas Act; that according to the decision of the United States Court of Appeals for the District of Columbia in the case of

Peoples Natural Gas Company et al., vs. Federal Power Commission, 127 F. (2nd) 153, decided February 16, 1942, rehearing denied April 13, 1942, and certiorari thereafter denied by the Supreme Court of the United States, it was determined by said Court as reflected by the opinion in said case:

(a) That sales of gas which have just moved or are about to move interstate constitute sales in interstate commerce and are under the jurisdiction of the Federal Power Commission under the Natural Gas Act;

(b) That Congress by the enactment of the Natural Gas Act has entered the field of regulation concerning all things which are an integral part of the interstate transportation and sale of natural gas for resale.

(c) That by reason of the Congress of the United States entering the field as referred to in (b) hereof, the various states concerned have lost authority to [fol. 121] *to* regulate such transportation and sales as are involved in this case now before this Commission even though such states may have has such authority prior to the enactment of the Natural Gas Act, and in this respect it is said by said Court that it is doubtful whether at the time the Natural Gas Act was passed, States of the Union had authority to regulate sales of gas such as are here involved in this case before the Commission.

(d) That said Court of Appeals in said case further holds, at least impliedly, that neither the Natural Gas Act nor any other law of the United States has given to this State or this Commission, or any other State or Commission; the power to say what price such Natural Gas Company shall pay for the gas purchased for transportation in interstate commerce.

That by reason of the foregoing, it has been decided by competent authority that this Commission has no jurisdiction to regulate or to fix the price of natural gas transported or about to be transported in interstate commerce and/or to grant the relief requested by Applicant in this proceeding. Whether or not the parties hereto or Commission believe said interpretation by said court is correct, it is presently a binding adjudication under supreme law of land.

Findings

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil & Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

4. The applicant is the owner of valid and subsisting oil and gas leases covering Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

5. As provided by law and the rules and regulations of the Corporation Commission, applicant filed with the Corporation Commission of the State of Oklahoma notice of its intention to drill a well in said section.

[fol. 30] 6. Peerless Oil and Gas Company has drilled a well for the production of natural gas located in the approximate center of said section, which said well was completed, equipped and ready for production on the 2nd day of May, 1945.

7. Cities Service Gas Company respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. In producing natural gas from its said wells located in the Guymon-Hugoton Oklahoma gas field, Cities Service Gas Company has been, for a considerable period of time, draining natural gas from underneath said Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, said drainage having been continuous from the time of the

completion of each of the wells of Cities Service Gas Company to the date of the hearing herein, and each of said wells, owned and operated by Cities Service Gas Company in the Guymon-Hugoton, Oklahoma gas field, have drained natural gas from underneath said Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, from the date of the completion of said Peerless Oil and Gas Company's well, on the 2nd day of May, 1945; that there has been material drainage from underneath said Section 8, practically all of which has been caused by Cities Service Gas Company.

9. That each and all of the wells owned by Cities Service Gas Company, in the Guymon-Hugoton field, are drilled into the same common source of supply or reservoir of natural gas, into which the Peerless well hereinabove described, [fol. 31] and have been producing and taking natural gas from such common source of supply or reservoir of gas.

10. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for compensation, hire, and otherwise, and from the same common source of supply or reservior of natural gas into which said well of applicant has been drilled as aforesaid.

11. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

12. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers, Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

13. The Cities Service Gas Company is in fact a common purchaser of natural gas.

14. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

15. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

[fol. 32] 16. Cities Service Gas Company is now, and has been at all times involved herein, engaged in taking natural gas from a gas field, to wit, the Guymon-Hugoton Oklahoma, gas field, *gas field*, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

17. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

18. The sole business and operation of Peerless Oil & Gas Company in the Guymon-Hugoton, Oklahoma, gas field is that it owns oil and gas leases covering considerable acreage in said field and has, pursuant to said leases, drilled several wells in said field, including the well above described and referred to.

19. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton, Oklahoma, *Oklahoma*, gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

20. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1922, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

21. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State [fol. 33] of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of *Oklahoma Natural Gas Company vs. State*, 161 Okla. 104, 17 Pac. (2d) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

22. That the operations of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

23. That on May 17, 1945, applicant tendered to Cities Service Gas Company, respondent herein, the natural gas to be produced from its said well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

24. Again on June 14, 1945, applicant herein tendered to respondent natural gas to be produced from its said well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

25. Each of said tenders, the first on May 7, 1945, and the second on June 14, 1945, were legal and proper tenders of natural gas and complied in all respects with the rules, regulations and orders of the Corporation Commission of the State of Oklahoma.

26. Cities Service Gas Company, respondent herein, after being served with said tenders and before the filing of the within suit, signified its willingness to take natural gas from said well of Peerless Oil & Gas Company, applicant herein, but refused to pay more than four cents per M. cu. ft. at the [fol. 34] wellhead for the natural gas measured at a pressure of 16.4 pounds absolute pressure per square inch, and refused to take and purchase natural gas from said well unless Peerless Oil & Gas Company, applicant herein, would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton, Oklahoma, oil field to Cities Service Gas Company, respondent herein, for the life of said leases at said price and measurement. There arose as a result a bona fide dispute between Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, as to the price measurement and terms of the taking of natural gas by Cities Service Gas Company from said well of Peerless Oil & Gas Company located in said Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

27. Applicant herein is also the owner of valid and subsisting oil and gas leases covering Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

28. Pursuant to the statutes of the State of Oklahoma and the orders of the Corporation Commission, Peerless Oil and Gas Company gave notice of its intention to drill a well for the production of natural gas in the approximate center of said section.

29. Pursuant to said notice, Peerless Oil & Gas Company drilled and completed a well for the production of natural gas in the approximate center of said section, said well being completed in and producible from the same common source of supply as that into which said well of Peerless Oil [fol. 35] and Gas Company was drilled in said Section 8 and into which the wells of Cities Service Gas Company were also drilled. Said well of applicant, in said Section 5, Township 4, North, Range 16 ECM Texas County, Oklahoma, was completed on or prior to January 28, 1946, and on January 28, 1946, Peerless Oil & Gas Company made a tender of the natural gas to be produced from its said well in said Section 5 to Cities Service Gas Company at a price of six cents per M. cu. ft., or in case the parties were unable to agree, at a price and under terms to be prescribed by the Corporation Commission of the State of Oklahoma.

30. With reference to said well in Section 5, Cities Service Gas Company signified its willingness to take natural gas therefrom but refused to pay more than four cents per M. cu. ft. of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said well unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in said Guymon-Hugoton field to Cities Service Gas Company for the life of said leases.

31. As a result thereof, a bona fide dispute has arisen between the applicant and the respondent, Cities Service Gas Company, with reference to the price measurement and terms of taking of the natural gas to be produced from applicant's well in said Section 5.

32. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per [fol. 36] thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application, when Peerless Oil & Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipeline of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Serv-

ice Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price for natural gas and/or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil & Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

33. The persons and corporations operating pipelines and transporting natural gas out of the Guymon-Hugoton Oklahoma Gas Field, own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefor been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-[fol. 37] Hugoton Oklahoma gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

34. There is no competitive market of natural gas in the Guymon-Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton Oklahoma Gas field at a price for less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

35. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma—to-wit: natural gas,—is being taken

out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

36. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers under contracts for different prices, terms and conditions.

37. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts containing different terms and conditions, as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contracts with Hagy, Harrington & Marsh.

38. Cities Service Gas Company is now and at all times [fol. 38] involved herein has been engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field—and in so doing is not taking natural gas for the purpose of developing a gas and oil field, or operating oil wells, or for the purpose of its own domestic use, and in so doing is draining natural gas from underneath reservoirs of another in said field, to-wit: Peerless Oil & Gas Company, applicant herein, and in so doing, Cities Service Gas Company is taking more than its proportionate share of the natural gas from said field and prevents Peerless Oil & Gas Company from taking its proportionate share of the natural gas from said field.

39. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

40. The operations of respondent, Cities Service Gas Company constitutes it a common carrier.

41. The operations of the respondent, Cities Service Gas Company constitute it a common purchaser of natural gas.

42. The operations of respondent, Cities Service Gas Company constitute it a public utility.

43. Cities Service Gas Company, respondent herein, should be required to take gas ratably from Peerless Oil and Gas Company's well located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, and from the well of Peerless Oil & Gas Company, located in

Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, for the following reasons and purposes, [fol. 39] any one of which is sufficient:

(a) Respondent is a common purchaser of natural gas in the field involved;

(b) Respondent is a common carrier of natural gas in said field;

(c) Respondent is a transporter of natural gas in said field;

(d) Respondent is taking and will continue to take more than its proportionate part of the natural gas in said field unless it is required to take natural gas ratably from said wells.

(*d*) Cities Service Gas Company is draining gas from underneath said Sections 5 and 8, into which said Peerless Oil and Gas Company's wells have been drilled, and will continue to drain gas from underneath said Sections 5 and 8 until all the gas thereunder has been drained and Peerless Oil and Gas Company will be prevented from taking its proportionate share of the natural gas in the field unless Cities Service Gas Company is required to take gas ratably from said wells of Peerless Oil & Gas Company.

(f) Production in said field is in excess of market demand and Cities Service Gas Company should be required to take natural gas ratably from said field in order to prevent waste, protect correlative rights and prevent unreasonable drainage from the reserves of another.

44. The taking of natural gas from the Guymon-Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

[fol. 40] (a) Economic waste of a great natural resource, to-wit: Natural Gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes.

(e) Inequitable taking of natural gas from the common source of supply involved.

(f) Discrimination against various producers in the field.

45. By reason of the findings aforesaid, this Commission has authority to require and should require Cities Service

Gas Company to take and continue to take natural gas from said wells of Peerless Oil & Gas Company ratably with the other wells in the field as ratable taking is prescribed in Order No. 17867 of the Commission.

46. By reason of the findings aforesaid and particularly by reason of the dispute between the applicant and respondent as to the price and terms of the taking of natural gas from said wells, this Commission has authority to fix and should fix the price and terms of natural gas taken and to be taken by Cities Service Gas Company from said wells of Peerless Oil & Gas Company.

47. For the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of [fol. 41] the producing formations in the Guymon-Hugoton Field at a price of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds, absolute pressure per square inch.

ORDER

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That the respondent, Cities Service Gas Company be and it is hereby required to take natural gas ratably from applicant's well located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

2. That the respondent, Cities Service Gas Company, be and it is hereby required to take natural gas ratably from applicant's well located in Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

3. That respondent shall pay to applicant for the natural gas so taken not less than 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 lbs. absolute pressure per square inch.

4. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in [fols. 42-43] Texas County, Oklahoma, for a price at the

wellhead of less than 7¢ per thousand cubic feet of natural gas, measured at a pressure of 14.65 lbs. absolate pressure per square inch.

5. This order shall be effective as of January 1st, 1947.

Done and performed by the Corporation Commission, at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this the 9th day of December, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary.

Certificate to foregoing paper omitted in printing.

[fols. 44-45] [Affidavit of Mailing Omitted]

[fol. 46] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 33006

PHILLIPS PETROLEUM COMPANY, Plaintiff in Error,

v.

THE STATE OF OKLAHOMA, THE CORPORATION COMMMISSION OF THE STATE OF OKLAHOMA, Cities Service Gas Company, Peerless Oil and Gas Company, The State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, The Texas County Land and Royalty Owners Association and All Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and, Particularly, in the Guymon-Hugot n Field, Defendants in Error

ORDER OF CONSOLIDATION—Filed February 7, 1947

It being made to appear:

1. That both the above styled and numbered cause and Cause No. 32994 entitled "Cities Service Gas Company, Plaintiff in Error, v. Peerless Oil and Gas Company et al., Defendants in Error", now pending in this court involve and are appeals from the same orders of the Corporation Commission of the State of Oklahoma, namely, Order No.

19514 and No. 19515, made and entered by said Commission under date of December 9, 1945, in Cause C. D. No. 1054, then pending before said Commission;

[fols. 47-59] 2. That there is on file in this court in said Cause No. 32994 a full and complete transcript and record of the proceedings and evidence before the Corporation Commission upon which said orders were based, duly certified to by the chairman of said Commission;

3. That to require plaintiff in error or said Commission to prepare and file a duplicate of said transcript and record in this cause would constitute an unnecessary burden and expense to the parties chargeable with the costs herein, would serve no useful purpose and would merely tend to encumber the records and files of this court with duplicate records.

Now, therefore, it is ordered, adjudged and decreed that the aforesaid transcript and record of proceedings before the Corporation Commission on file in this court in said cause No. 32994 shall be and the same is hereby made a part of the Petition in Error and record in this cause by reference and will be considered by the court in its decision of this cause all to the same extent as if said transcript and record or an exact copy thereof had been attached to the Petition in Error and filed in this cause.

Done this 7th day of February, 1947.

Thurman S. Hurst, Chief Justice.

[fols. 60-64] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. CD-1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent,

STATE OF OKLAHOMA ON RELATION OF THE COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, Intervenor

RECORD ON APPEAL

[fol. 65] [Caption omitted]

[fol. 66] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

CD No. 1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

v.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent

APPLICATION—Filed October 12, 1945

Comes now the applicant above named and alleges and states:

(1) Peerless Oil and Gas Company, applicant herein, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and duly authorized to transact business in Oklahoma.

(2) Cities Service Gas Company, respondent herein, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and duly authorized to transact business in Oklahoma, having designated B. A. Ames, First National Building, Oklahoma City, Oklahoma as its service agent.

(3) Applicant is the owner of valid and subsisting oil and gas leases covering Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

(4) As provided by law and the rules and regulations of the Corporation Commission, applicant filed with the Corpo- [fol. 67] ration Commission of Oklahoma notice of its intention to drill a well in said section.

(5) Applicant has drilled a well for the production of gas located in the approximate center of said section, which said well was completed, equipped and ready for production on the 2nd day of May, 1945.

(6) Respondent herein is engaged in producing natural gas from the Hugoton, Oklahoma, gas field and from the same common source of supply into which said well of Peerless Oil and Gas Company has been drilled, as aforesaid, and respondent is taking such gas from said field for purposes other than that of developing a gas or oil field, operating oil wells or for its own domestic use.

(7) Respondent is engaged in the transportation of natural gas in and from the Hugoton, Oklahoma, gas field for compensation, hire and otherwise and from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

(8) Respondent is now and has been for a considerable length of time engaged in purchasing natural gas, produced in the Hugoton, Oklahoma, gas field from the same common source of supply or reservoir into which said well of applicant has been drilled, as aforesaid, and respondent is a common purchaser within the definition of the laws of the State of Oklahoma.

[fol. 68] (9) Respondent is taking natural gas from the common reservoir or source of supply into which said well owned and drilled by Peerless Oil and Gas Company has been drilled, as aforesaid, and in so doing is draining natural gas belonging to said applicant from underneath said Section 8, Township 4 North, Range 16 ECM, Texas County, Oklahoma.

(10) Respondent is the owner of a pipe line which crosses Section 13, Township 4 North, Range 15 ECM, Texas County, Oklahoma, and is engaged in the purchase and transportation of natural gas in Texas County, Oklahoma, as aforesaid, which natural gas it thereafter sells. In so doing the respondent herein is not producing its wells ratably with said well owned by Peerless Oil and Gas Company and has not taken, purchased and produced natural gas from said applicant's well ratably with the wells belonging to respondent and wells from which respondent is taking and purchasing natural gas, as aforesaid.

(11) By reason of the matters and things hereinabove set forth respondent is securing and unfair proportion of the natural gas from the common reservoir into which said well owned by applicant has been drilled, as aforesaid, is not taking ratably from applicant the natural gas in proportion to applicant's interest in said gas, and is draining gas from underneath said Section 8, Township 4 North, Range 16 ECM.

(12) Production in the Hugoton, Oklahoma, gas field is in excess of the market demand and by reason of all the [fol. 69] matters and things hereinabove set forth appli-

cant has been suffering and is now suffering and will continue to suffer irreparable loss and damage by reason of the drainage of said Section 8 as aforesaid.

(13) Heretofore and on the 7th day of May, 1945, applicant mailed to respondent a tender and demand, a copy of which is marked "Exhibit A" attached hereto and made a part hereof. Respondent has ever since refused and neglected to comply with said notice and demand.

(14) On the 14th day of June, 1945, applicant mailed to respondent, via registered mail, return receipt requested, a second notice and demand, a copy of which is attached hereto marked "Exhibit B" and made a part hereof. A true and correct copy of said notice and demand was on said date mailed to [redacted] Corporation Commission of the State of Oklahoma.

(15) Under and by virtue of the laws of the State of Oklahoma and the orders of the Corporation Commission of said state, entered pursuant thereto, it is the duty of respondent to produce natural gas from its wells, located in the Hugoton, Oklahoma, gas field ratably with said well of Peerless Oil and Gas Company and to take and/or purchase natural gas from said Peerless Oil and Gas Company's well ratably with said wells of respondent and with other wells from which respondent is purchasing natural gas in said gas field, all of which said respondent has refused to do.

[fol. 70] (16) That applicant has negotiated with the respondent in regard to the tenders made by applicant to respondent of the gas to be produced from its said well located in Section 8, Township 4 North, Range 16 E.C.M., and, while respondent has signified its willingness to take the natural gas produced from said well ratably with natural gas taken from wells owned and operated by respondent and other wells located in the field, a dispute has arisen between applicant and respondent as to the price to be paid for the natural gas so to be produced from applicant's said well located in Section 8, Township 4 North, Range 16 ECM; that by reason thereof the Corporation Commission of the State of Oklahoma has jurisdiction and authority to

determine and fix the price to be paid by respondent for the natural gas to be produced from said well and the terms and conditions of the taking of natural gas from said well, and by reason thereof said Commission also has jurisdiction and authority to fix and should fix the price to be paid for natural gas throughout the Hugoton, Oklahoma, gas field by all purchasers of natural gas therein.

(17) Applicant alleges that ten cents (10¢) for one thousand (1000) cubic feet of natural gas, measured at atmospheric pressure, is a reasonable price for natural gas in the Hugoton Oklahoma, Gas Field, and that by fixing the price to be paid by all purchasers of natural gas in the Hugoton, Oklahoma, Gas Field at ten cents (10¢) per one thousand [fol. 71] (1000) cubic feet of natural gas, measured at atmospheric pressure, the Corporation Commission of the State of Oklahoma will prevent waste of natural gas, conserve natural gas, and prevent use of natural gas for inferior purposes.

(18) The present practice of measuring gas at two (2) pounds above atmospheric pressure results in a loss to the producers and royalty owners to the extent of ten (10) per cent or more of natural gas purchased from the producers and royalty owners, and a corresponding loss to the State of Oklahoma in gross production taxes, and to the Commissioners of the Land Office of the State of Oklahoma in royalties derived from the school lands of the State of Oklahoma.

Wherefore, applicant prays that this matter be set down for hearing, that proper notices be given as required by law and the rules and regulations of the Corporation Commission, that a hearing be had and an order of said Commission entered requiring respondent to connect its pipe line to the well drilled and owned by Peerless Oil and Gas Company aforesaid, at some point designated by said Commission, and to take and purchase natural gas from said Peerless Oil and Gas Company's wells ratably with the wells of respondent and the other wells in the field from which respondent is purchasing natural gas under price and terms to be fixed by the Corporation Commission, in fixing the price of said natural gas, fix the price to be paid by all purchasers of natural gas in the Hugoton, Oklahoma, Gas Field and for

such other and further relief as applicant may be entitled under the law.

[fol. 72] Richardson, Shartel, Cochran & Pruet By (S.) Earl Pruet, Attorneys for Applicant, 1133 First National Building, Oklahoma City, 2, Oklahoma.

[fol. 73] *Duly sworn to by Earl Pruet. Jurat omitted in printing.*

[fol. 74] EXHIBIT "A" TO APPLICATION

Registered,
Return Receipt Requested.

May 7, 1945

Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma

Re: Peerless Oil & Gas Company Sections 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

GENTLEMEN:

Peerless Oil and Gas Company is the owner of oil and gas leases covering Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

Peerless Oil and Gas Company has drilled a well for the production of gas located in the approximate center of said section, which said well has been completed, equip-ed and is now ready for production.

You are now engaged in producing natural gas from the Hugoton, Oklahoma, gas field and in taking such gas from said field for purposes other than of developing a gas or oil field, operating oil wells or for your own domestic use.

You are also engaged in the transportation of natural gas in the Hugoton, Oklahoma, Gas Field for compensation, hire and otherwise and are a common purchaser with-
[fol. 75] in the definition of the laws of the State of Oklahoma.

You are now taking natural gas from the common reservoir into which said well drilled and owned by Peerless Oil and Gas Company has been drilled.

[fol. 122] (9) For further answer and additional defense herein, Respondent says that, independently of the Natural Gas Act and Notwithstanding said Act, neither the State of Oklahoma nor this Commission has authority to fix the price of, or regulate the sales of, gas as here involved because it would cast a burden on, impede and impair interstate commerce in contravention of said commerce clause of the United States Constitution referred to in paragraph (8) of this Answer.

(10) For further answer and additional defense herein, Respondent says that heretofore as a consequence of the national war emergency, the Congress of the United States passed the Emergency Price Control Act of January 30, 1942, same being 50 U.S.C.A. 901-946, inclusive. Under the provisions of this Act and the O.P.A. regulations promulgated pursuant thereto, which are now in full force and effect, the determination of the price of dry gas, being the kind of natural gas involved in this proceeding, has been confided to what is known as the Office of Price Administration. This functionary has issued what is known as Revised Maximum Price Regulation No. 436, and Amendments thereto, relating to and including natural gas and placing a maxi-um price upon the seller of gas in or from a gas field such as involved in this proceeding, and the attempt of Applicant, as outlined in its said application, to procure an order from this Commission for Respondent to take and or purchase gas from Applicant and pay [fol. 123] Applicant therefor the amount designated in its said application is in direct violation of said regulation. This Commission is without authority during the time said Emergency Price Control Act and Regulations promulgated pursuant thereto are in effect to take any action concerning the regulation of the price of dry gas as disclosed by the facts herein involved. The attempt on the part of this Commission to exercise any price-fixing power with relation to such dry gas would be entirely incompatible with the duties and powers with relation to such dry gas would be entirely incompatible with the duties and powers of the Office of Price Administration under the Federal Laws, since Congress has fully occupied this field by legal and constitutional authority and is fully exercising its powers with reference to the same. In addition thereto, and since in

this particular instance the transaction and sale involved are one in interstate commerce and one vitally affecting interstate commerce and the transportation of natural gas in interstate commerce, any orders this Commission would make relating to, concerning, or regulating the price of dry gas or the terms of the contract for the sale or transportation thereof would be invalid and nugatory. In this connection, paragraph 2 of Article VI of the Constitution of the United States, in part, provides:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every [fol. 124] state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding,"

and Section 34, Article IX of the Constitution of Oklahoma, particularly that part reading as follows:

> "The provisions of this Article shall always be so restricted in their application as not to conflict with any of the provisions of the Constitution of the United States, and as if the necessary limitations upon their interpretations had been herein expressed in each case."

(11) For further answer and additional defense herein, Respondent says that this case presents for consideration the following Statutes and Orders of the Commission, namely: Chapter 198 of the Laws of 1913, being 52 O.S. 1941, 231 to 235, inclusive; Chapter 99, Laws of 1913, being 52 O.S. 1941, 25 to 35 inclusive; Chapter 197 Laws of 1915, being 52 O.S. 1941, 236 to 247 inclusive, and Order No. 17867 of this Commission governing the Guymon-Hugoton Gas Field.

(a) Respondent alleges that Chapter 198 of the Laws of 1913 above referred to, in so far as the same attempts to confer upon this Commission authority to fix the price of gas and/or other terms of purchase or taking in the purported dispute between Applicant and Respondent, is unconstitutional and invalid, and contravenes Article IV and Section 1 of Article V of the Constitution of the State

[fol. 125] of Oklahoma, and is an unlawful delegation of legislative power to the Commission in that—

(1) the Act prescribes no policy for the Commission to follow in fixing the price of gas and/or other terms of purchase or taking;

(2) prescribes no standard, guide or rule for the Commission to follow in fixing the price of gas and/or other terms of purchase or taking, and

(3) in effect, reposes an absolute unregulated and undefined discretion in this Commission which amounts to a bestowal of arbitrary powers.

(b) If it be determined that said Chapter 198, Laws of 1913, as referred to in (a) hereof, is not an unconstitutional delegation of Legislative power, then Respondent further alleges that said Act is not self-executing but contemplates that the Commission promulgate and adopte, before said Act becomes operative as a law, general rules and regulations of the Commission affecting all persons alike and prescribing with clarity the terms and conditions governing all purchases and/or takings of gas; that the Commission has not promulgated and adopted such regulations, and the application of Peerless Oil and Gas Company herein is therefore premature, and the Commission has no jurisdiction to grant the relief requested by Applicant in this proceeding.

[fol. 126] (c) Order No. 17867 of this Commission, particularly Section 9 thereof, is invalid and unenforceable because it purports and attempts to adopt the provisions of the Common Purchase Statutes of Oklahoma as above referred to without first promulgating and adopting regulations governing the equitable purchasing of gas; that the Common Purchaser Acts of Oklahoma are not self-executing but contemplate that this Commission promulgate and adopt general rules and regulations governing the equitable purchasing of gas, and covering all terms and conditions thereof and made applicable to all persons alike who are under the jurisdiction of the Commission under said Acts. The rules and regulations of the Commission, as disclosed by said Order No. 17867 of this Commission, provide no adequate standards for formulating gas purchase contracts for fixing the price of gas, and do not provide for making

the owner or producer sell, but only that buyer purchase; that said regulations as disclosed by said Order are vague, indefinite, uncertain, unilateral and inequitable.

(d) Respondent further says that at the time of enactment of the Laws of Oklahoma hereinbefore referred to it had a vested right in the transportation of gas in interstate commerce that was incapable of revocation by said State or this Commission; that it then had interstate pipe lines and facilities and several of its predecessor companies [fol. 127] had already made large investments in what are integral portions of its integrated interstate pipe line system and were owning and operating those portions, respectively, and Respondent succeeded to all their rights in that regard.

(e) That fixing the price of gas is beyond the police power of the State of Oklahoma and this Commission; that the State of Oklahoma is limited in the exercise of its police power, or any other power, to measures designed for, adapted to, and reasonably related to the conservation of natural resources; to the prevention of actual or imminently threatened waste of the same; *to the protection of the correlative rights of persons therein, and to businesses monopolistic in character, and so affected with the public interest in the sense that the regulation of the price thereof is essential to the protection of the public;* that under the facts disclosed by the application of Peerless Oil and Gas Company herein and the facts as involved in this case, no waste is occurring or threatened, and no correlative rights have been or are being impaired. The operations of Respondent are not monopolistic in character and the regulation of the price of gas is not essential to the protection of the public; that the present action of Applicant has no relation to any of the foregoing, but merely an attempt to impose restrictions on the interstate business of Respondent for Applicant's sole private benefit and monetary gain; [fol. 128] that fixing the price of gas transported or about to be transported and sold in interstate commerce is not within the jurisdiction of this Commission or within the police power of the State, for the above reasons together with others, and legislation by the State or regulations by this Commission attempting to establish or fix the price of gas cannot properly be enacted or promulgated.

(12) For further answer and additional defense herein, Respondent says that, notwithstanding any of the statutes of Oklahoma or the rules and regulations of this Commission heretofore referred to, the attempt by this Commission to fix the price of gas or other terms of purchase and/or taking, or to grant the relief requested by Peerless Oil and Gas Company as set forth in its said application would—

(a) take Respondent's property without due process of law;

(b) deprive Respondent of its right to liberty of contract;

(c) by Legislative or Commission fiat make Respondent a common purchaser when it is not such in fact;

(d) by Legislative or Commission fiat make Respondent a common carrier when it is not such in fact;

(e) deny Respondent the equal protection of the laws; [fol. 129] (f) deny Respondent the enjoyment of the gains of its own industry;

(g) impair the obligation of Respondent's presently existing contracts;

(h) take Respondent's gas by disabling Respondent from transporting it;

(i) take the pipe line system and facilities of Respondent both by preventing Respondent from using and carrying its own gas and compelling Respondent to carry the gas of others;

(j) convert Respondent's private property to public use without compensation;

(k) take Respondent's liberty by compelling it to hire its property and its services to others without its consent;

(l) unlawfully delegate legislative power to this Commission to write a special contract for private parties by fixing the price and other terms of purchase and/or taking of natural gas;

(m) authorize this Commission in the same proceeding to exercise legislative and judicial power;

(n) unlawfully authorize this Commission, without the promulgation of general rules, to regulate and fix the term, conditions, details, price, time of payment, quality of gas, excuse for nonperformance, interrupt-

[fol. 130] ability clauses, features protective against monetary standard, or general commodity index changes, minimums, maximums, dehydration, and other similar or dissimilar details and elements of a contract between private parties;

(o) deny Respondent the right of trial by jury; and in contravention of the following provisions of the Constitution of the United States and the Constitution of Oklahoma, namely:

The 14th Amendment, Constitution of the United States that part reading as follows:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, *nor shall any state deprive and person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*"

Section 10, Article I, Constitution of the United States, that part reading as follows:

"No state shall * * * pass any ex post facto law, or law impairing the obligations of contracts."

Section 8, Article I, U.S. Constitution, reading in part as follows:

"The Congress shall have power * * * to regulate commerce * * * among the several states."

Bill of Rights, Sec. 7, Art. II, Okla. Const., reading as follows:

[fol. 131] "No person shall be deprived of life, liberty, or property without due process of law."

Bill of Rights, Sec. 15, Art. II, Okla. Const., reading as follows:

"No bill of attainder, ex post fact- law, *nor any law impairing the obligation of contracts*, shall ever be passed. No conviction shall work a corruption of blood or forfeiture of estate; Provided, that this provision shall not prohibit the imposition of pecuniary penalties."

Bill of Rights, Sec. 23, Art. II, Okla. Const., reading as follows:

> "*No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity,* or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law."

Sec. 19, Art. II, Oklahoma Constitution, providing right of trial by jury shall be and remain inviolate.

Bill of Rights, Sec. 24, Art. II, Okla. Const., reading in part as follows:

> "*Private property shall not be taken or damaged* for public use without just compensation. * * *
> [fol. 132] Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. * * * In all cases of condemnation of private property for public or private use, the determination of the character of the use shall be a judicial question."

Sec. 46, Art. V, Okla. Const., that part reading as follows:

> "*The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing:*
>
> "* * * Regulating the practice or jurisdiction of, or changing the rules of evidence, in judicial proceedings or inquiry before the Courts, justices of the peace, sheriffs, commissioners, arbitrators, or *other tribunals,* or providing or changing the methods for the collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate."

Sec. 59, Art. V, Okla. Const., reading as follows:

> "Laws of a general nature shall have a uniform operation throughout the State, and *Where a general law can be made applicable, no special law shall be enacted.*"

[fol. 133] Sec. 34, Art. IX, Okla. Const., that part reading as follows:

> "The provisions of this article shall always be so restricted in their application *as not to conflict with any of the provisions of the Constitution of the United States, and as if the necessary limitations upon their interpretation had been herein expressed in each case.*"

Sec. 1, Art. IV, Okla. Const., reading as follows:

> "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."

Sec. 1, Art. V, Okla. Const., reading as follows:

> "The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature."

[fol. 134] (13) Further answering herein and for additional defense, this Respondent says that Chap. 198 of the Laws of 1913 appears in O.S. 1941, as Sections 231 to 235 inclusive; that Chap. 197 of the Laws of 1915 appears in O.S. 1941, as Section 236 to 247 inclusive; that both Acts purport to and do cover the taking and/or purchase of natural gas, and the provisions of each of said laws widely differ from, and are at variance and repugnant to, each other in respect to purchase and/or taking of gas, and that the 1913 Act is repealed and superseded by substitution of the 1915 Act, which fully covers the subject of taking and/or purchasing, and that the 1913 Act and the 1915 Act, being parts of the same Code and irreconcilable con-

flicting with each other, and the 1915 Act, appearing by reason of the arrangement of said Code after the 1913 Act therein, supersedes and renders nugatory and unenforceable the provisions of the 1913 Act.

(14) Further answering and for additional defense herein, this Respondent says that if this Commission shall determine that the 1913 Statutes and the 1915 Statutes are each valid and subsisting acts; purport largely to cover the same classes of things and that therefore in construing them together they must be construed in pari materia and the intent of the Legislature be deduced from such an interpretation, and that such meaning be given to each as is compatible with the giving of force to each of the other [fol. 135] provisions of said statutes, then said application utterly fails to state a cause of action or any ground of relief for Applicant because it affirmatively shows Respondent has fully complied with said Statutes.

If this Commission holds that it is not exercising judicial power in this hearing, but only administrative power, and on that account does not feel it is justified in declaring any portion of said statutes in contravention of the Constitution of the United States, the commerce clause, or any other Federal enactment or order, or in contravention of the Constitution of the State of Oklahoma, or for any other reason holds that no portion of said statutes is invalid, then this Respondent respectfully submits that construing said statutes together in pari materia and giving as full force to every provision as will not derogate from giving similar force and effect to every other provision, the construction of said statutes should be that if a compulsory purchase of gas be ordered then it must be comprised of a directed contract to be signed by both parties before becoming operative and containing such terms as to length of operation and all other operative details, including, among other things, price and times of payment, which if complied with by this Respondent, will not cause it to discriminate in favor of Applicant or against other sellers of gas to Respondent in said field in respect not only as to price but as to all other material terms of the contract, for the reason that said statutes requires of this Respondent, if they [fol. 136] require anything of it, and it shall purchase equitably and without discrimination. For the reason that the sole object and relief sought are to compel this Re-

spondent to purchase inequitably and to discriminate against those from whom it is purchasing gas in said field, this application should be dismissed.

Wherefore, Respondent prays that Applicant take nothing by its said application and that any and all relief requested by it be denied.

II

Respondent for its separate answer to that part of the application of Peerless Oil and Gas Company requesting this Commission to fix the price of gas generally for all purchasers in the Guymon-Hugoton Field, joined herein for convenience only, among other things and without waiving any other defenses herein or objections to the jurisdiction of the Commission which it may desire later to present at the hearing and its further right to be there heard, states:

(1) Respondent makes all applicable defenses and objections heretofore set forth in I hereon a part hereof as fully and completely as if here set out at length.

(2) That no statutory authority exists in the State of Oklahoma authorizing this Commission, or any other body, to fix the price of gas in the Guymon-Hugoton Field or in [fol. 137] any other field within the State of Oklahoma.

(3) That if there was any statute in the State of Oklahoma purporting to authorize this Commission or any other body to fix the price of gas generally in the Guymon-Hugoton Field, the same would be invalid and unconstitutional and beyond the police power of the State.

(4) That as to gas produced in said field for transportation and sale in interstate commerce, this Commission has no jurisdiction to fix the price thereof because--

(a) such action on the part of the Commission would cast a burden on, impede, and impair interstate commerce in contravention to the Commerce clause of the Constitution of the United States of America, namely, clause 3, Sec. 8, of Article I thereof;

(b) such action would under current unreversed Federal decisions contravene the provisions of the Natural Gas Act, 15 U.S.C.A. 717;

(c) such action would contravene the terms and provisions of Emergency Price Control Act of 1942, 50

U.S.C.A. 90-1-946, and O.P.A. Regulations promulgated pursuant thereto now in full force and effect.

(5) For this Commission to raise the price of natural gas in the Guymon-Hugoton Field in Texas County, Oklahoma, [fol. 138] over and above the existing market price and/or the prevailing price of gas in said field, as requested by Applicant, would automatically force an increase in the price of gas to the ultimate consumers in this and other states; obstruct functionaries in their respective jurisdictions to fix prices of gas and other things; impede state agencies in the various other states in fixing rates for local distribution of gas in derogation of the rights of those sister states, all for the exclusive private pecuniary benefit of a very small number of individual vendors of gas and in derogation of the public interest comparising the general welfare of the great gas-consuming public in this and other states of the Union.

Wherefore, Respondent prays that the application of Peerless Oil and Gas Company herein to fix the price of gas in the Guymon-Hugoton Field be denied and dismissed.

III

Further answering herein, Respondent objects to a joint hearing of the requests of Applicant to (a) fix the price of gas and other terms of purchase concerning the purported dispute between Peerless Oil and Gas Company and Cities Service Gas Company and (b) fix the price to be paid by all purchasers of natural gas in the Guymon-Hugoton Field, and moves for a separate hearing on each of said matters for the following reasons: ——

[fol. 139] 1. The request of Applicant to fix the price of gas and other terms of purchase concerning the purported dispute between Peerless Oil and Gas Company and Cities Service Gas Company is judicial in character, which requires a private adversary hearing.

2. The request of Applicant to fix the price to be paid by all purchasers of natural gas in the Guymon-Hugoton Field is legislative in character and requires a public hearing.

3. The joining in one application and the granting by Commission of a joint hearing thereon of legislative and

judicial relief is (a) contrary to the due process clause of the Constitutions of the State of Oklahoma and the United States of America and (b) prejudicial to the rights of Cities Service Gas Company in that Respondent is not afforded a fair opportunity to be heard and present its evidence and defenses and is not accorded a fair, just and impartial hearing as required by law.

s/Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

[File endorsement omitted.]

[fol. 140] NOTE—RELATING TO OBJECTIONS, MOTIONS, RULINGS AND EXCEPTIONS:

Following the close of this cause, and for the purpose of clarifying, correcting and completing the record, the parties entered into a Stipulation relative to objections and exceptions. Said Stipulation was reduced to writing, signed by the parties, and filed with the Secretary.

NOTE:

As the Exhibits admitted and made a part of this record are Numerous and several of them Bulky said Exhibits are not attached within this cover but are separately bound and accompany this volume as a part of this record. Exhibits are not indexed but are arranged in numerical order, numbered 1 to 93.

[fol. 141] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. CD 1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Plaintiff,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Defendant

Reporter's Transcript of Hearing

Be it remembered, that on May 6th, 1946, the above entitled matter came on for hearing before The Corporation

Commission, in its Court Room in the Capitol Office Building, with Chairman Bond, Ray O. Weems, Vice-Chairman, and Wm. J. Armstrong, Commissioner, sitting.

Thereupon the following proceedings are had and done, to-wit:

Chairman Bond: The Commission has before it CD-1054, Motion of Cities Service Gas Company requesting Commission advise Respondent in advance of the hearing in above cause and what rules of practice, and procedure, if any, will be applied at the hearing.

Mr. Rolston: We are ready.

(At this time Mr. Rolston reads the motion to the Commission and makes an argument on said motion) After concluding the reading and argument on the motion, the following:

Chairman Bond: The Commission will answer this question when it becomes necessary in the trial of this Cause and [fol. 142] if it does become necessary.

Mr. Rolston: Note an exception to the ruling.

Chairman Bond: Exceptions allowed.

Next cause on the docket is C.D. 1054, Peerless Oil & Gas Company vs. Cities Service Company.

Mr. Rolston: We haven't filed an answer which we have prepared, due to the fact that this motion has been pending. Now that it has been ruled on we would like permission to file an answer. A copy of which on April 15th was given to Mr. Green and Mr. Pruet.

Chairman Bond: Permission granted.

OFFERS IN EVIDENCE

Mr. Green: I would like to offer the formal exhibits and let the answer come in the proper place.

Chairman Bond: Let the answer be filed.

Mr. Green: I would like to offer as Exhibit, copy of the Application filed by the Peerless Oil & Gas Company, together with the affidavit of Mr. Pruet as to service, also attached to the application as Exhibit A, copy of letter addressed to the Cities Service Gas Company; attached as Exhibit B, a letter from the Peerless Oil & Gas Company addressed to the Cities Service Gas Company under date of June 14, 1945; also attached to it a copy of the Order

on the 26th day of November, 1945, also having attached [fol. 143] to it a copy of the notice issued by this Commission setting the cause for hearing Nov. 26, 1945. I would like to offer that as Exhibit No. 1.

Chairman Bond: Received.

Mr. Green: I would like to offer as Exhibit No. 2, Affidavit of publication showing that the notice was published in a paper at Guymon, styled Guymon Herald; Exhibit No. 3, offer the affidavit of publication showing when it was published in the Oklahoma County Register.

Chairman Bond: Received.

Mr. Green: Exhibit 4, I would like to offer a copy of the motion filed by the Cities Service Gas Company which the Commission just passed on.

Chairman Bond: Received.

Mr. Green: I would like to ask permission to withdraw that and substitute a copy.

Chairman Bond: Permission granted.

Mr. Green: Exhibit 5, I would like to offer a copy of the Answer which the Cities Service has just filed with the Secretary.

Chairman Bond: Received.

Whereupon all the exhibits so offered and received are copies in this record and made a part hereof and will be found on Pages —— ——.

[fol. 144] Floyd Green: I offer Exhibit 6, a letter signed by Margaret A. Davis, addressed to the Corporation Commission of Oklahoma, dated February 16, 1946.

(Whereupon Floyd Green reads Exhibit 6.)

Chairman Bond: Received.

Floyd Green: I also would like to read to you, Exhibit five.

Chairman Bond: Alright.

(Whereupon Floyd Green reads Exhibit 5.)

[fol. 145] Reporter's Note: At this point Exhibit 5, same being a copy of the identical instrument entitled "Answer of Respondent, Cities Service Gas Company", filed in this case on May 6, 1946, is read to the Commission. As this exhibit will be attached as a part of the record in this case and will be duly indexed, to avoid duplication the same is not here copied.

Mr. Pruet: We now offer in evidence Exhibit 7, being Order No. 16377, and being the first order issued in regard to these wells.

We also offer, as Exhibit 8, Order No. 17410;

We also offer, as Exhibit 9, Order No. 17867, which is presently in effect in the Guymon-Hugoton Field, and

We offer, as Exhibit 10, Order No. 17359, which is the order commonly referred to as the Cabot Carbon Company Order, in which the Commission fixed the price to be paid by Cabot.

Mr. Green: May it be agreed that I may supply and place into the record a copy of the orders, each of the orders continuing this case from time to time until this time, at some later date after the hearing is closed?

Mr. Rolston: We have no objection to that.

Mr. Pruet: We have no objection to it.

Mr. Rolston: We object to Exhibit 10, as incompetent, irrelevant and immaterial and as an attempt to inject a [fol. 146] collateral matter into this case. We further object to all orders of the Commission concerning the Guymon-Hugoton Field except those that are now in full force and effect and were in full force and effect at the time the application was filed.

Mr. Pruet: We think they are all admissible, because in these cases, in this class of proceeding it is always important to show the history of the procedure had before the Commission in these cases,—the fact that the Commission has over a period of years issued similar orders,—the fact that the Commission has on other and different occasions fixed the price of gas in a field. It is considered and it is important when a particular case, as for example this case, if it should go before the Supreme Court it would be important to have before that court the fact that these orders were made,—it would be important to have before the Supreme Court the previous orders of this Commission for the purpose of showing a policy adopted and adhered to by this Commission.

Mr. Rolston: May I inquire if you are asking that the Commission fix the price for this particular well and also fix a minimum price for the Field?

Mr. Pruet: We ask that the price be fixed on this particular well, as between the applicant and the Cities Service

Gas Company. We are also asking that a minimum price for the Field be fixed.

(Oral argument off the record.)

[fol. 147] Chairman Bond: Are there any other orders made by the Commission establishing a price or imposing a ratable taking?

Mr. Pruet: Exhibit 7, Order No. 16377 and Exhibit 8, Order No. 17410 do not in any wise directly—they do not fix a price and they are not offered for the purpose of showing that the Commission did, in those orders, fix a price. But the Commission did, in those orders require a ratable taking and that a purchaser not discriminate against any producer. However, we do not have any great objection to having those two orders excluded.

Chairman Bond: The Commission will receive the orders but in receiving them the Commission will state that the question of price was not contested in the Carbon Black case. The Commission wouldn't like for the orders to become part of the record and have some other court believe the Commission had fixed the price of gas in a contested case, in that proceeding,—the Commission in that case fixed the price of gas with no objection by anybody. The objection is overruled and exceptions allowed.

Reporter's Note: The exhibits admitted are made a part of the record and attached, with other exhibits, duly indexed, following the record of oral testimony.

Mr. Pruet: We ask to have marked Exhibit 11 a letter dated June 14, 1945, from myself to Judge R. E. Cullison, of Cities Service Gas Company,—

We ask to have marked as Exhibit 12, another letter under [fol. 148] the same date, from Peerless Oil & Gas Company, to Cities Service Gas Company,——

We ask to have marked Exhibit 13 a return receipt, signed by Jack Teague,——

And we ask to have marked Exhibit 14 a return receipt, signed Corp. Comm. by Winston Billingsley,——

We also ask to have two Registry Receipts marked Exhibits 15 and 16, these receipts showing the mailing of these two registered letters.

We now offer in evidence exhibits 1 to 16, inclusive, however a number of them have been received in evidence.

Chairman Bond: Received.

Reporter's Note: Above exhibits are attached, in numerical order, at the close of oral testimony.

[fol. 149] Mr. Pruet: We offer Exhibit 18, being receipt reflecting mailing of the registered instrument. Exhibit 17 being the letter dated March 25th, 1946 from myself to the Cities Service Gas Company; Exhibit 19 being return receipt signed by Jack Teague under date of March 27th, 1946, copy of letter dated June 14, 1945, Exhibit No. 20, all of which were enclosed and mailed, registered mail, return receipt requested, as shown by the exhibits.

Mr. Rolston: Object only, the general reason they have not stated a cause of action by the pleadings.

Chairman Bond: Received. Overruled and exception allowed.

Mr. Pruet: Now offer in evidence exhibits 21, 22, 23 and 24, being a letter to Lawrence Alley, dated March 25, 1946, from myself, copy of Letter June 14th, 1945, which is Exhibit 22 and was enclosed therewith, receipt showing mailing of the registered article and return receipt signed by Lawrence Alley of the Corporation Commission, all of which we offer in evidence.

Chairman Bond: Received.

Whereupon all exhibits offered and received are copied in this record and made a part hereof and found at pages ____.

[fol. 150] Chairman Bond: The Commission would like to hear you two gentlemen further on the question of notice and on the question of condition precedent, and would like to hear from the applicant first.

Mr. Pruet: Would the Commission rather we would put on the proof of mailing of notices first, or argue the question first?

Chairman Bond: I think it would be better to put on proof of notice, first.

LAWRENCE R. ALLEY, called as a witness for Applicant, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Pruet:

Q. You may state your name.

A. Lawrence R. Alley.

Q. What is your official capacity with the Corporation Commission, if any?

A. I am Chief Clerk in the Oil and Gas Conservation Department.

Q. Is it your duty, or part of your duty, as such Chief Clerk, to mail out notices to all producers, operators, purchasers and takers of natural gas, of the filing of applications such as in this case and of the time and place set for the hearing of such applications?

A. Yes, to all of those that ask to be put on our list of those to receive such notices.

[fol. 151] Q. Now, what do you mail out when an application is filed under the oil and gas statutes of this State,—we'll say that the application is filed, an order is issued by the Commission setting the matter down for hearing and a notice is issued by the Commission and published,—what do you mail out?

A. I mail out a copy of the application.

Q. Do you mail out a copy of the notice, also?

A. No, sir.

Q. Do you note on that copy of the application the date the matter is set for hearing?

A. Yes, it is noted on there the date it was filed, the date it is set for hearing and the time it is set for hearing.

Q. Do you have that mailing list?

A. I have a copy of the mailing list.

Q. You mean for what?

A. For the Guymon-Hugoton Field.

Q. I wish you would get that.

A. (Witness retires and returns with papers) I believe this list is complete, but to be certain I would have to check the addressograph plates.

Q. I will ask that the list mentioned be marked Exhibit 25, and, handing you Exhibit 25, so marked for the purpose of identification, I will ask you to state what it is.

A. This is a typewritten copy of the names of people who [fol. 152] are on what we call the Guymon-Hugoton list, mailing list.

Q. These names, so far as you know, are the names of producers, purchasers and takers of gas in the Guymon-Hugoton Field?

A. I would say it is,—yes.

Q. And it contains the names of all the people who have asked to be placed on that mailing list?

A. Yes, sir.

Q. Now, with reference to this particular case before the Commission, being Peerless Oil and Gas Company versus Cities Service Oil and Gas Company, CD 1054, can you tell the Commission whether or not a copy of the Application of the Peerless Oil and Gas Company, with a note of the date and time it was set for hearing, was mailed to all those people and corporations who are on that mailing list?

A. Yes, sir, it was.

Q. More than eight days before the date the case was set for hearing?

A. I am sure that it was,—yes, sir.

Mr. Pruet: We offer Exhibit 25 in evidence.

Chairman Bond: Let Exhibit 25 be received, and the Commission will overrule the motion as to the issuance of proper notice, and exceptions are allowed.

(The witness is excused.)

Chairman Bond: The original Exhibit 25 may be withdrawn and a copy substituted.

[fol. 153] Reporter's Note: Copy of Exhibit 25 is made a part of this record and is attached, with other exhibits, in proper numerical order, following transcript of oral evidence.

Chairman Bond: Here is the question the Commission would *I* like to hear argument upon,—if the tender is not in accordance with the Rules and Regulations of the Commission what effect would it have?

And here is another question,—*take this hypothetical situation, for instance,—if you make application for a connection and there is no going-price in the Field, how are you going to comply with the Commission's order, or what would be your position in that event?*

(Oral argument, off the record.)

[fol. 154] KENNETH ELLISON, a witness being called and having been sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Pruet:

Q. You may state your name please.
A. Kenneth Ellison.
Q. Where do you live?
A. Oklahoma City.
Q. What is your business or profession?
A. I am an independent consulting geologist.
Q. Of what schools are you a graduate and with what degrees have you graduated from those schools?
A. I graduated from the Missouri School of Mines, which is part of Missouri University, at Rolla, Missouri, in 1925 with a B.S. Degree in Petroleum engineering and since that time I have been engaged by several oil companies for a period of about eight years, which would be up until about 1932; since that time I have been active in the oil business and as a consulting geologist in Oklahoma City. For a time I was with the Kerlyn Oil Company, for a period of about three years and since 1945 I have been an independent consulting geologist representing such companies as the Denver Producing & Refining Company, Big Chief Drilling Company and have done considerable evaluating work for the First National Bank and Trust Company and numerous [fol. 155] other independents who do not have their own geological staffs.
Q. Have you had occasion to study the natural gas industry particularly with reference to the producing end of it?
A. On numerous occasions I have made appraisals of gas properties in Oklahoma, Louisiana, Kansas and Texas.
Q. Have you, in the course—in the practice of your profession, have you had occasion to make a study of and become familiar with the Hugoton, Oklahoma gas field, commonly known as the Guymon Hugoton gas field in Oklahoma?
A. Yes, sir, I have been in the Guymon area,—the first well drilled was drilled by the Wilcox Oil & Gas Company

back in 1924. I went with the Wilcox Oil & Gas Company a short time after receiving my B.S. Degree in Geology and did considerable subsurface work in Cimorron, Texas and Beaver counties which covered the Panhandle area out there at that time, later when the Hugoton field finally extended down in Oklahoma I watched it since that time, kept up a subsurface map.

Q. Recently, in the last two or three years and since the Commission has entered its first order covering the Hugoton field, have you had occasion to make detailed and special studies in regard to that field?

A. I have prepared subsurface maps on that field trying to analyze the aerial extent, how far it would go to the east, how far west and how far south. I also prepared [fol. 156] Isobar maps and pressure maps showing the pressure from the wells after completion and made valuations of royalty interests and various lease interests.

Q. Are you familiar with the productivity, gas producing horizon there and the ultimate recovery per acre that may be expected and things of that kind?

A. Yes, sir, I have made calculations on several occasions estimating the ultimate recoverable gas per acre.

Q. What do you mean by 'virgin pressure'.

A. Virgin pressure, that is the pressure that is in the reservoir before any gas had been extracted or the pressure allowed to be reduced in any way. In other words, the highest initial pressure in that locality.

Q. From your study of the Hugoton field and the history of the Hugoton field, what would you consider or what did you consider the virgin pressure of that field?

A. Well, there has been pressure recorded up there as high as probably 442 or 43 pounds but the average highest initial pressure up there in my opinion, average weighted pressure about 432 pounds.

Q. Now, state whether or not any well drilled in the field, any one well if operated for a long enough period of time would eventually reduce the pressure in the entire field.

[fol. 157] A. The production from the Hugoton gas field is coming from the Permian Big Lime series or three principal zones known as the Herrington, the Crider and the Wellington and they are of the Permian age and the gas from all the wells are coming from this source which is a common source of supply, and by it being gas production

it is my opinion that a few wells could drain the entire reservoir.

Q. Natural gas is much more fugacious than oil.

Judge Cullison: We object to leading questions.

A. Yes, sir.

Mr. Pruet:

Q. State whether or not natural gas is much less or much more fugacious than petroleum oil.

A. Gas naturally moves through open or porous formation much easier than a fluid or oil.

Q. State whether or not drainage of gas reservoirs will be more or less extensive and be more or less rapid than it would be of an oil reservoir.

A. Well, the reason for the wide spacing out there almost answers that question. The Commission designated 640 acres per well on the theory that one gas well will drain a large wide area and had it been oil—I never heard of any oil field being spaced at 640 acres on the theory that one well would drain all the oil out of one section or 640 acres.

[fol. 158] Q. Now have you had occasion to make a study of the Peerless Well?

A. Yes sir I prepared a way showing the shut in pressures of vrtually every well, the wells in and surrounding the Peerless tract, section 8—4 north, 60 ECM and I have evaluated approximately—to April 1, 1945 in dollars and cents and the future production taken out from under that tract—if produced and calculated a value for that gas.

Mr. Ralston: If the commission, we object to any testimony concerning drainage, as incompetent, irrelevant and immaterial to the issues in this case. (Whereupon oral argument was had off the record.)

Mr. Pruet: (to witness) Do you have the completion date of the Peerless Well?

A. Yes sir I have, it was completed on May 2nd, 1945, according to the logs filed with the Corporation Commission.

Q. Now then—what do the records of the Corporation Commission show as to reference to the back pressure of the well at the time it was completed?

A. The record shows that they have a back pressure of 427 pounds per square inch.

Q. Do you know whether or not the well has been recently tested?

A. Yes it was.

[fol. 159] Q. What was the test and when was it tested last?

A. They had a pressure test made on May 3, 1946, last Friday or Saturday. I believe last Friday, and the Trim Capshaw was there.

Q. What did that pressure show at that time?

A. Cromwell Number four at that time, 419.5 pounds.

Q. Then in the int-*irm* and between the completion date of the Peerless well and the test last Friday, how much in pounds was the back pressure reduced?

A. Almost exactly one year from the time that the first pressure was taken until the second pressure, the decline shows the difference of seven and a half pounds.

Q. In a period of twelve months?

A. Yes, sir.

Q. Now I believe you stated that you had made an estimate of the recoverable gas in places—as of the virgin pressure of the field—just tell the Commission what you have done in that regard?

A. I took an area shown on this map——

Q. State what Exhibit 26 is Kenneth.

A. That is a pressure contour map or sometimes called a isebar map. It shows lines of equal pressures—these pressures are the shutin pressures, they are of record in the Corporation Commission, in the Conservation Department in Oklahoma City. The lines or isebar lines denote [fol. 160] points of equal pressure, for example the line on the center of the left side of the map shows a figure of 370 pounds and the area is shaded blue, that area is the area of the last pressure on this map. The Peerless Number 1 Cromwell is located about eight miles—each of these low pressure areas and as you go off the left side of the map to the right the pressure lines gradually increase from 370 pounds to 380 pounds, 390 pounds, 400 pounds, 410 pounds and 420 pounds.

Q. Now with the higher area pressures shown by the isebar line that goes through section eight in which the Peerless Oil and Gas well in question has been drilled and the isebar lines to the left of the map showing the lower pressures until one is reached in the left hand side of the

map showing 370 pounds in the blue area, what does that indicate to the direction of the migration of the gas in that area?

A. That gas in the formation of that kind moves in the direction of lower pressures since there is about fifty pounds of the low pressure, the movement of gas is from the Peerless tract.

Q. In looking to the eastward of the Peerless tract, state whether or not there is any producing gas wells shown?

A. No producing gas wells directly east, there are one or two wells but no producing.

Q. What is true with reference to producing wells with [fol. 161] reference to the northwest and the southwest or in direction of the low pressure areas, what in reference to the producing wells there west—generally from the Peerless wells?

A. There is wells generally in every section west of the Peerless well and near wells north and northwest and west and southwest, all of which are producing except the Peerless well in Section five, north.

Q. Whose wells are these west and northwest and southwest? (indicating on map)

A. Cities Service, and are operating approximately 110 wells in the section.

Q. What does the low pressure area on the west side of the map indicate with reference to the wide drilling of the natural gas as to high or low pressure?

A. The low pressure indicates that the widedrill, the most gas taken out.

Q. What in your opinion with examination of the records of the Commission, with your knowledge and experience with the Houghton Field and particularly with the information on Exhibit 26, what has become with the natural gas that was drained underneath section 8 from where the Peerless well has been, by what wells has this been drained?

A. It has been drained by all of the wells directly west of [fol. 162] that tract.

Q. This map here has 100 and some odd Cities Service Wells that you have testified about?

A. Yes, this doesn't show all of them.

Q. Please state the number—and the pressures in Section Eight that have been reduced since it's been drilled in, what is the total production of the pressure in the reduc-

tion, horizon of the virgin pressure down to the pressure last Friday?

A. The weighted average of 432 pounds, that is conservative. There is a pressure decline of 12½ pounds.

Q. In connection with the producing horizon—you have referred to three different ones?

A. Yes, sir.

Q. State whether or not these three different sands that you referred to—whether they are interconnected and whether they may comprise a single common source of supply of gas?

A. They had, because the pressure decline map shows that that is what happened from one area to another.

Q. Now then state whether or not from your own knowledge and from experience in this field and from the information reflected by the Corporation Commission's records and the information on the map, Exhibit 26, whether or not these wells in the Cities Service Gas are drilled in the same common source of supply?

[fol. 163] A. I say that vertually all of them are drilled into Herington, Bridler and Wingfield section which are por-us lime.

Q. Section 8 in 26, as indicated here?

A. Yes.

Q. And other colors indicate different pressure areas?

A. Yes, sir.

Q. The well directly north of the Peerless Oil and Gas Companies well in Section eight which is in Section five, whose well is that?

A. That is owned by Peerless Oil and Gas Company which is Number one Fisher completed February 7, 1946.

Q. That well has not been connected yet?

A. No.

Q. It is not producing either?

A. No.

Q. It actually is not producing?

A. No, sir, it's capable tho..

Q. What you said about pressures and reserves and what you will say about pressures and reserves and valuations with reference to section eight will apply to section five, immediately north?

A. Approximately the same.

Q. Now just tell the Commission what you have done

and what your studies show with reference to the reservoirs [fol. 164] and valuations, etc., of section eight?

A. I have taken the Corporation Commission's records and computed the whole accumulated gas production area of five miles square or twenty-five square sections. In this area of twenty-five square sections there are sixteen gas wells completed of which are owned by Cities Service and marketing the gas.

Q. What Peerless wells are there?

A. Peerless Number One Fisher, Section five, Four north, ECM and Peerless Number One, Cromwell, Section 8, four north, ECM.

Q. Go ahead with the valuation?

A. The whole accumulated production from the fourteen Cities Service wells to April 1, 1946, 15,522,079 mcf, the average gas production per section as of April 1, 1946, would be 620,883 mcf, or evaluating that at four cents per mcf, the value would be $24,835.00. In other words the whole loss due in this section——

Q. Section Eight?

A. For the year 1945, I have computed it—fourteen wells produced for the year 1945, 7,025,772 mcf the gas production per section in this area during the year of 1945 as to 281,031 mcf, the value of that gas on the basis of four cents per 1000 is $11,241.00, that is the loss for the period of 1945 [fol. 165] in gas under section eight.

Q. In other words that section lost from drainage from these other wells gas at the rate of four cents per 1000 cubic feet of the whole value of $11,241.00 in one year?

A. Yes, if there had been a well on each section and allowed to produce on the same basis for the fourteen wells, now there would have been produced——

Q. Go ahead.

A. To calculate the future production underlying the sections the weighting natural back pressure is 432 pounds. The average back pressure for the fourteen wells producing is 389 pounds. So back pressure decline is 43 pounds. You can take the whole gross and divide it by the pressure number pounds decline and get the average gas pressure per pound of back pressure decline. That method of computing gas reserve is the back pressure decline method and the most accurate. The total gas pressure per pound back pressure decline is 360,979 mfc, estimating the future gas

production to twenty-five pound abandonment pressure for this area that will be 131,396,356 mfc, that is the total for twenty-five sections or for one section the estimated average future gas production would be 5,255,854 mfc. This amount of gas valuated at four cents per 1000 is $210,234.00. You then take the past drainage of $24,835.00 together with $210,234.00 future production, the whole ultimate loss for [fol. 166] this well if not allowed to produce would amount to $239,069.00 on the basis of four cent gas.

Q. In your opinion, will these wells that are located in close proximity to Peerless, one in section 8, if they are continued to produce and Peerless not permitted to produce what would this do to the gas reserves?

A. The Peerless wells in any section that is undrilled or no wells producing will be entirely drained of its gas by the wells.

Q. Go ahead with your exhibit and explain any further computation that you have made.

A. That is covered as far as Peerless is concerned.

Q. Have you made any examination of the records of the School Land Commission with reference to the Royalties or Minerals owned by the State of Oklahoma, owned by the School Land Commission in the Guymon-Hugoton Field?

Mr. Cullison: We object to that because the School Land Commission is not a party to the Hearing and it serves in prejudicing this Commission because they are an arm of the State.

Mr. Pruet: I will advise that the School Land Commission are very much interested in and wanted to assist in this trial, we want to show what interest the State of Oklahoma has in that field out there.

[fol. 167] Mr. Cullison: You can see the fix we are in if we have one arm of the state government upholding another arm of the state government. We want to help you out all that we can and bring this before Your Honors. We object to this because we think that it should be ruled out. If this be a general hearing which includes Phillips, Skelly, Panhandle Eastern and Southwestern and Republic and everybody that buys gas and then let the State come in formerly that is a different situation. One of the arms of the state speaking for the other arm of the state is not proper here.

Vice Chairman Weems: Overruled, exceptions allowed.

A. I have totaled up the number of lease acres or the number of royalty acres which the school land owns, I believe in the proven gas area in Texas County.

Q. Alright what is the total acres there?

A. All of the acreage shown on this map in blue—which is a map of Texas County is the last owned by the School Land Department in the State of Oklahoma at the present time, there is a very small amount developed and on production.

Q. What is the total acreage in the Productive area owned by the School Land Commission?

A. Total of 11,400 acres.

[fol. 168] Q. Have you made a valuation or estimation of the ultimate recovery of its value of the School Land Commission?

A. I have.

Q. Will you detail what your findings are in that regard?

A. On the basis of the recoverable gas in the Guymon Area, 11,000,000 cubic feet per acre, that is the gas to be produced over the entire life—1,250,000 cubic feet evaluating this on the basis of four cents per thousand——

[fol. 169] The instrument from which the Witness testified is marked as Exhibit 27, and is offered and received.

[fol. 170] (Continuation of argument upon last-preceding objection.)

Mr. Pruet: This is a matter in which the parties interested in that Field have been given notice. All the interested parties are in the lawsuit. The State of Oklahoma owns land up there and is interested. If this Commission makes an order which involves the entire Field, then all the mineral owners are interested.

Mr. Ralston: If the Court please, they are taking over the case—they are joining with the suit against Cities Service in legislative proceeding, they are trying to hold a legislative hearing to fix the price of gas in the Guymon-Hugoton Field and I assert that by doing that you are not according us a fair hearing to settle this dispute between two private litigants. We are being denied due process. This testimony offered now has nothing to do with the issues between the applicant and the respondent.

Mr. Pruet: We offer this evidence only as to that portion

of the application which seeks to fix the price in the entire Field. We do not offer it in support of any private controversy between Peerless and Cities Service Company.

Chairman Bond: Proceed, the objection is overruled and exceptions allowed.

Judge Cullison: I believe this matter ought to be determined now. There is a misunderstanding somewhere and it probably arises from the fact of the Commission's attempting to hold a legislative hearing,—now, I think the Commission at least ought to inform us so that we may know whether you are holding a legislative hearing or a [fol. 171] judicial hearing. I have practiced law 46 years, or pretended to, and I have never participated in such a hearing,—a joint legislative and judicial hearing. What may be of interest to the public or of interest to another party would certainly prejudice——

Mr. Pruet: I think it is entirely proper. I don't think anything has been introduced up to now and I am not intending to offer anything that would produce a state of facts prejudicial to their interests. I don't think there has been any offer of any testimony that is not proper in a judicial or quasi-judicial hearing and I am not intending to introduce any such evidence, and I don't see how they can be prejudiced by these facts.

Judge Cullison: There wouldn't be any cases on it,—such a case has never been tried before and I'm sure——

Mr. Pruet: Your Honors, please, I have had to try cases that never had been tried before,—I just got through one. We are going to show something in this hearing,—it may be in my favor and it may be in yours, but it doesn't scare me just because it's something new.

Chairman Bond: Gentlemen, the objection will be overruled. Exceptions are allowed. You may proceed.

Mr. Ralston: If the Commission please, they want the Commission to fix the price of gas in the Guymon-Hugoton Field and in the same hearing determine the issue now presented between the Peerless and Cities Service Companies. If you want to know my view as to the proper procedure to obtain those results, it would be to first fix the price of [fol. 172] gas in the Guymon-Hugoton Field,—have your legislative hearing and fix that price and then you can go ahead and file your case with the Commission, but you are premature here. You have to establish the price of gas in the Field and then make your demand.

Mr. Pruet: That's what we are trying to do,—fix the price in the Guymon-Hugoton Field.

Chairman Bond: Gentlemen, there may be a misjoinder here, you may be merely in the trial of a case to fix the price of gas at one well, which is in dispute, or you may be in the trial of a case to fix the price of gas in the Guymon-Hugoton Field. There may be some statutory authority in the Act of 1913, which one party claims has been repealed or superseded and the other party claims is in force. The Commission hasn't passed upon that question yet.

Mr. Pruet: If the Commission please, if we hadn't asked that the price in the Field be fixed, in this way, then we would have had to tender them the gas at what they say was the going price in the Field, in which event we could never have gotten a price established in the Field. Now, when we ask for a price to be established in the Field, they say we are premature, because we should have established the price first. If we had done the other first they would be saying we should have done first what we are trying to do now.

[fol. 173] Mr. Pruet: (Continued) We have just come in here with everything we've got and I have confidence enough in this Commission to believe that when it's over they will give us whatever relief we are entitled to under the laws of the State of Oklahoma.

Chairman Bond: Proceed, Gentlemen, the objection is overruled and exceptions allowed.

A. The value of 11,400 acres, based or priced at $50.00 per acre, the value of gas ultimately to be produced, would be $570,000.00. This measurement of gas at two pounds above atmospheric pressure is equal to a discount of ten percent plus, or, computed, $57,000.00, in addition to the $570,000.00, making the total value of the royalty ultimately to the State of Oklahoma, on the basis of 4c per thousand, of $627,000.00. And, of course, if you use 8c as the basis price, price basis, it would be twice that much.

Q. This exhibit which has been marked Exhibit 28 is your written calculation concerning Peerless Oil and Gas properties in Section 8, Township 4 North, Range 16, East, which is involved in this lawsuit?

A. That's right.

Mr. Pruet: We offer exhibit 28 in evidence.

Chairman Bond: Received.

Mr. Ralston: If the Commission please, we object to Exhibit 28, on the ground that it is self-serving, that it is hearsay and, that the matter of drainage is incompetent, ir-

[fol. 174] relevant and immaterial to the issues involved in this lawsuit. On the first page of this exhibit is a letter written by Mr. Ellison to Mr. Pruett. Mr. Ellison is here in the courtroom and he has testified.

Mr. Pruet: We will withdraw the letter part of it.

Chairman Bond: Let the letter be stricken.

Mr. Ralston: We object to the rest of it because the witness, Mr. Ellison, has already given his testimony in the record concerning the matters to which this exhibit relates.

Chairman Bond: Who prepared this exhibit 28?

Mr. Pruet: Mr. Ellison prepared it.

Chairman Bond: Let it be received,—Exceptions allowed.

Q. What is Exhibit 29?

A. This is an instrument I have just identified,—I have just given the Commission the number of acres of land owned by the School Land Department and——

Mr. Ralston: Just a moment,—we object to this exhibit for all the reasons given for objection to the other exhibit, number 28,—the State of Oklahoma is not a party to this lawsuit—and for the further reason that the witness has already testified concerning this matter, over our objection, and this is merely a summary of his testimony and, in addition to that, as the judge says, I don't think the State of Oklahoma has ever asked us to do anything that we haven't done.

Mr. Pruet: We offer in evidence Exhibit 29.

[fol. 175] Chairman Bond: Received, exceptions allowed.

Q. Do you know what the practice is, of the Cities Service Company and others, for the measurement of gas in the Guymon-Hugoton Field,—what is the basis for measurement of natural gas in that Field?

A. I have seen one or two contracts up there, one of which was the Cities Service Company, which shows it is on the basis of two pounds over atmospheric pressure.

Q. The atmospheric pressure is 13.2, isn't it?

A. The atmospheric pressure is 13.2 or 13.3.

Q. These measurements are on the basis of 13.4, are they not?

Mr. Ralston: Objected to, as leading.
Chairman Bond: Sustained.

Q. Have you taken into consideration and have you computed, on the basis of the total gas produced in the Guymon-Hugoton Field in the year 1945, the loss that that method of measurement and the use of that pressure basis has resulted in to the State of Oklahoma in gross production taxes, to the royalty owners in the Field and to the purchasers, producers?

Mr. Ralston: Objected to as assuming something not in the record, not in evidence.
Chairman Bond: Sustained,—the witness has not been qualified to answer that.

Q. In your study as a petroleum engineer, and particularly with reference to your study of the natural gas in-
[fol. 176] dustry, do you know and can you compute the difference in volume that results from the use of different pressure methods in the measurement of natural gas?

A. Well, I believe I can. I have worked with attorneys in preparing gas contracts several times and I know that one of the most important things to be stated in the contract is the method of measuring the gas.

Q. You have had such experience over a period of years?

A. Yes, sir.

Q. Do you know what the pressure is at sea level,—what the atmospheric pressure is at sea level?

A. I believe it is 14.73.

Q. Do you know what the atmospheric pressure is in the Hugoton Field.

A. I think, for all practical purposes, 13.2 or 13.22 pounds per square inch.

Q. What is the approximate average atmospheric pressure in the Mid-Continent area, that is, in the area in which the Cities Service Gas Company is operating?

A. I think, 14.4 is the more or less accepted pressure in the central portion, where the elevation above sea level is eight or nine hundred to a thousand feet.

Q. That would be the atmospheric pressure in the localities in which the Cities Service Gas Company is engaged in selling natural gas?

[fol. 177] A. Of course I don't know where they sell gas.

Q. We'll assume that they sell it in Oklahoma, that they sell it in Kansas, in Missouri and other states, Nebraska, and some in Texas.

A. Well, in those areas, all except Texas, would run about 800, 900, 1000.

Q. Can you tell the difference in volume per 1000 cubic feet of gas when the pressure of 13.4 is used as the basis and when the pressure basis of 13.4 plus two pounds is employed?

A. Yes, it amounts, in percentage, to 10.8,—between 10 and 11 percent,—about 10.8.

Q. Then, in other words, if gas is pressured at 14.4 plus two pounds would you have more or less volume of gas than you would if the same gas were pressured at 14.4?

A. You would have more gas by having the two pounds,—that would give you about 10.8% more gas. In the contracts I have seen where they had the two pounds additional above atmospheric pressure they actually got about two pounds more gas than they actually paid for.

Mr. Ralston: We object to that answer. Now, Your Honor, as a gas man you know if the basis were different the price would be different. When he talks about their getting more than they pay for that is a conclusion on his part,—it's just a question of price,—the lower the pressure the lower the price. The price the Company purchasing [fol. 178] would pay would be that much lower, yet he says somebody would be getting more than they paid for.

Mr. Pruet: These Companies, in their contracts, prescribe the pressure at which the gas may be measured, for the purpose of determining how much gas is purchased and sold. It doesn't follow that——

Judge Cullison: We object only to the conclusion of the witness that they get more than they pay for. To say that we get some that we don't pay for——

Vice-Chairman Weems: Let Mr. Pruet reframe his question. Proceed.

Q. If you use a basis pressure of 14.4 plus two pounds,—if you use that pressure for measuring natural gas will you

receive more or less gas by that basis pressure method, per volume, than you would if you measured it at 14.4?

A. You definitely would receive more gas on a percentage basis which amounts to almost eleven percent.

[fol. 179] Mr. Pruet:

Q. Then, if I understand correctly, by using 14.4 plus 2, whoever gets the gas on that basis of measurement receives eleven percent more natural gas than they would if it was measured on a base pressure or atmospheric pressure of 14.4?

A. That is correct.

Q. Do you have available the amount of natural gas per thousand cubic feet produced in the State of Oklahoma in the calendar year 1945.

A. I have those figures, yes, sir.

Q. How much natural gas was produced in the State of Oklahoma for the year 1945.

A. The reported amount as shown by the Corporation Commission records was 218,239,000 M C F.

Q. Now, then, that was on a basis—state whether or not that was on the basis of 14.4 plus 2 pounds of pressure.

A. Of course that is a factor we don't know because all gas companies, all gas contracts don't have the two pound over and above atmospheric pressure. I have seen contracts, helped prepare contracts where it was half a pound above or quarter of a pound above atmospheric pressure, but assuming that all of the gas was measured by the two pounds above atmospheric pressure then there would have been an excess amount of gas for the year 1945 that was not actually measured or paid for by their method of measurement of [fol. 180] 23,569,912 M C F.

Judge Cullison: We move to strike that out about the gas received that wasn't paid for.

Chairman Bond: Objection sustained.

Mr. Pruet:

Q. What was the difference in volume of natural gas, assuming that 14.4 plus 2 pressure was used, how much more of volume of natural gas was included in that method of computation than if they has used 14.4.

A. Well the percentage basis is given 10.8, but in actually

calculating the figure for the year 1945, that is gas produced in the State of Oklahoma, for the year 1945, in cubic feet, would be 23,569,812 feet.

Q. How much more gross production taxes would have been paid to the State of Oklahoma if the pressure basis of 14.4 had been used instead of a pressure basis of 14.4 plus 2.

Mr. Ralston: We object to that for the reason and on the grounds it is incompetent, irrelevent and immaterial and foreign to the issues in this case, and collateral.

Chairman Bond: Suppose the Commission fixes the price of gas, do you think they would have the right to fix the pressure at this time?

Mr. Pruet: The statute says they fix the price in terms and the fixing of a price, in my judgment, is not truly fixing that price unless it includes as part of the terms the pres- [fol. 181] sure at which gas is measured for such purchase and sale. I think it is essential that the Commission—I think the statute contemplates that the Commission fix the terms and the price and the essential terms and at least one of them is the pressure basis used in measuring the gas sold, because in price fixing unless you fix that pressure it don't mean anything because it leaves it up to their judgment as to what pressure they are going to measure the gas when they sell it.

Judge Cullison: The question as to how much royalty the State had lost by being put on 2 pounds pressure rather than on the average pressure, that is what we are objecting to. It begs the question,—the royalties and the contracts for gas are based on pressure. If the pressure was less the price would be less, so it amounts to nothing in the way of loss. He says it makes a difference around eleven percent. That is probably correct as I get it, but the price would have been eleven percent less if Your Honors would see fit to lower the pressure base,—well there would have to be a translation of price into that lower pressure base or a change of the contract because the parties include the pressure in the contract, so we are objecting what the State, [fol. 182] how much more they would have gotten more on royalty on 14.4 instead of 16.4, the contract being on 16.4.

Chairman Bond: If that would throw any light on the question in arriving at a just conclusion as to what pressure

basis gas ought to be priced on, it might benefit the Commission.

Mr. Pruet: That's what we offer it for.

Judge Cullison: He is trying to show what the State lost.

Chairman Bond: It's immaterial who lost it, it is the difference between the price at the different pressures.

Mr. Pruet: We are just showing what the difference in gross production taxes would be, based on the two different measurements.

A. Based on a four cent price per thousand cubic feet, the loss to the State of Oklahoma——

Mr. Pruet:

Q. Just say the difference in price, don't say 'loss', the Judge objects to that—difference in gross production tax would be so and so.

A. Difference in the gross production tax to the state of Oklahoma would amount to $47,139.00.

Q. What is the difference in money to the royalty owners.

A. That would have amounted to $117,849.00.

[fol. 183] Q. What is the difference in money to the producers, 7/8s working interest amount to, assuming the price is the same.

A. At four cents per thousand, assuming all contracts call for the measurements of gas at 2 pounds above atmospheric pressure, it would have been to the operator a difference of $942,792.00.

Q. If the price of natural gas were eight cents it would be—what would be the comparative figures?

A. It would have been twice that amount in each case, difference in gross production tax,—difference to the royalty owner and difference to the operator.

Q. Do you have a recommendation, from your experience, to make, what in your opinion should be used as the pressure basis for the measurement of natural gas in connection with the purchase and sale of the same if the commission fixes the term and the price in this case?

A. I think the fairest pressure at which to take for measurement of gas is the one used and adopted by the U. S. Bureau of Mines. I think their figure is 14.75.

Q. That includes atmospheric pressure of 14.4 and what else?

A. Four ounces above, for the safety factor to the purchaser of gas.

Q. You may cross examine.

[fol. 184] Cross-examination.

By Mr. Ralston:

Q. The Hugoton gas field is in how many states?
A. Three states.
Q. Is there wells drilled into the field in all three states?
A. Yes, sir.
Q. That is, they are producing wells.
A. Lots of them in each state.
Q. Now, did I understand your testimony correctly there was three producing horizons in the Hugoton field?
A. No. I would term the production coming from one zone but this one zone is comprised principally of three zones, base pay comes from three zones known as the Herrington, Winfield and the Crider but they are all interconnected.
Q. What is the other zones?
A. That is the three principal zones.
Q. Is there any other one?
A. Lot of different names, Ft. Riley,—sometimes they get a little out of the Odell. It is shale usually.
Q. What is the depth of the producing horizon and the name of that horizon that is nearest to the surface in the Guymon Hugoton pool in Texas County?
A. Herrington. Depth will range—depends on surface elevation, depends on what part of the field you are, whether the east side or west side. Average depth to the Herrington about 2650. That is the point where most of it was tapped.
[fol. 185] Q. That is the Herrington.
A. Yes.
Q. What is the next producing horizon.
A. Winfield—that is existent at different places. There are little local formations comes in that produces a little gas but those are the three principal horizons that produce in a large area.
Q. What is the next producing horizon?
A. Crider. Crider and Winfield—Herrington, Crider and Winfield, named in descending order.
Q. What is the depth of the Herrington?
A. You mean generally—approximate depth 2650.

Q. And the Crider.

A. Around 27 hundred usually; 50, anywhere from 25 to 50 feet below the Herrington.

Q. Winfield?

A. 50 to 75 feet below the Crider.

Q. Now, is there any below that?

A. Not that I would say was a blanket formation that is existent over any large area.

Q. Is there any below that in this Guymon Hugoton pool in Texas County, that is producing?

A. I expect some places in the field where they go a little deeper than that and get a little pay.

[fol. 186] Q. Did I understand you to testify these three zones, the Crider, Winfield and Herrington, they are interconnected.

A. Yes, sir, they are in the holes because virtually all the wells have penetrated all three zones and the common practice is to set the pipe on top of the Herrington, therefore these three formations are all open in the hole.

Q. Do you know what horizon the well of Peerless is producing from?

A. It is producing from all three zones, yes, sir.

Q. Do you know what producing horizon the wells of the respondent is producing from?

A. Most from all three zones, yes, sir.

Q. Now this well of Peerless in section 8, is that correct.

A. Yes, sir.

Q. As I understood your testimony the low pressure area is west of that well.

A. That is correct.

Q. Now, is there gas underlying the surface east of section 8.

A. Yes, sir.

Q. How far does it extend.

A. I believe the eastern limits of the Guymon Hugoton area will continue or extend about 15 miles east of the Peerless well.

Q. If the gas is drained from under the Peerless well in the low pressure area isn't that acreage under section 8 [fol. 187] compensated by the gas entering from the east there or the south?

A. To some degree, yes, sir.

Q. You have made allowances for that?

A. I didn't consider that factor for this reason, when Peerless is going to be benefitted in like manner Cities Service Wells will be benefitted by this vast area to the east that is underlain with gas.

Q. This, as I understand, this is one large reservoir.

A. Yes, sir, that's right.

Q. If there is a number of wells producing in Kansas and Texas—a lot of other producers in the field besides Cities Service Gas Company.

A. That's right.

Q. You said Cities Service Gas Company was draining the gas.

A. That's right,—the reason for that being, virtually all the wells that are producing near this well are owned by Cities Service, naturally the wells that is closest to this particular section of land is going to enjoy the most benefit by drainage.

Q. You mean to say that the Cities Service Gas Company is taking all the gas that is drained out from under section 8.

A. There might be one or two exceptions,—Panhandle might have a well or two wells that is enjoying it to some degree, but a majority of the wells are Cities Service wells in that vicinity.

Q. Now, this well, as I understand, was completed May 2nd, 1945.

A. That's right.

[fol. 188] Q. Had the gas in that well been tendered to Cities Service Gas Company at four cents and had been taken by them, would there ever been any drainage.

A. No, sir, if they had been allowed to produce on the same basis as wells in that area, they would have protected themselves.

Q. You figured this drainage, amount of gas drained at four cents a thousand cubic feet, is that right?

A. That's right.

Q. You say these three producing horizons are interconnected, now interconnected where?

A. Each hole, each well is drilled through all three formations and leaving that formation open that allows intercommunication from one horizon to another.

Q. You mean that the wells in the field are drilled down and produced from the three horizons?

A. I wouldn't say that. There are exceptions—very seldom do they make an exception to that rule. In some places they get water in the lower zone,—for example in the Winfield, in that part of the field they discontinued drilling down to the Winfield where they are located high enough not to encounter water. Could probably be a majority of the operators drill all three pays and set the pipe in the upper pay.

Q. Isn't it true that there has been, roughly, 500 billion cubic feet of gas taken out of the Kansas part of the Hugoton field?

[fol. 189] A. Well, I don't have that figure at hand. If you say there has, there probably has been.

Q. Against one hundred billion in Oklahoma.

A. I could check those figures for you. If you say that's right, I expect it is.

Q. I'm asking you.

A. I can't give you the figure right now. I'll be glad to get it for you.

Q. Do you know anything about how much has been taken out of the part of the Hugoton field in Texas?

A. No, sir, but very little because I know the Phillips owns all that production down there. I know in one or two specific occasions, in making appraisals down there, very little production has been taken out of their wells.

Q. Do you know concerning the contract that Phillips has with Panhandle Eastern, concerning the taking of gas from the Texas part of the field?

A. No, sir. Only contracts I am familiar with of Phillips is their contracts with the royalty holders.

Q. You never heard of the contract between Phillips and Panhandle Eastern.

A. No, sir, I never had access to it.

Q. Never heard of it.

A. Well, I am sure there is a contract in existence but I have never seen it.

[fol. 190] Q. Now, Mr. Ellison, you say there is a great many producers of gas in the Hugoton field—large quantities of gas was being produced in the Kansas part of it and Texas part of it out here in the Hugoton part of the field in Texas County, is that correct?

A. I believe I testified to that—unless you asked me the question,——

Q. Isn't that true?

A. Well, there is a lot of gas being produced in Texas. I wouldn't use the adjective "large quantity". I don't believe the takes of Phillips has produced much gas per well down there. The largest area of withdrawal I am familiar with is the Cities Service Area in 4-14-4-14 and 15—I believe there is more gas being produced there than anywhere in the field.

Q. Why did you take that particular part.

A. That is where this Peerless lease is.

Q. Isn't it a fact when you take the gas out of this reservoir you diminish the supply all over the reservoir?

A. That's right.

Q. Why did you reach the conclusion that the Cities Service Gas Company, being just one of the many producers in the Guymon Hugoton pool, is taking all this gas from the Peerless well and nobody else is taking it?

[fol. 191] A. Because the Cities Service wells are the ones having those heavy withdrawals, have created this low pressure area, they are the wells nearest to the Peerless well, naturally they are the ones deriving the benefit of any gas that might migrate from the Peerless wells or any wells in that section for that matter.

Q. You haven't taken in consideration in arriving at that, the fact that the gas taken out, from out under the Peerless well, is compensated by gas from other acreage.

A. No, sir. The same thing goes for each Cities Service well producing in that same locality. They are taking gas from under the Peerless well and they are also having additional gas migrate to them from any undeveloped section in that particular immediate vicinity.

Q. If we had a connection with the Peerless well in section 8, and take the gas out of there, then according to your view point we would be taking gas or would be drawing gas from out under of the other sections east of here. (Indicating.)

A. The further east, less effective the drainage is.

Q. Do you know whether or not the area of the Hugoton field has been defined?

A. Do I know?

Q. Yes.

A. I know it has not been. Yes, I know.

Q. Do you know the area of it as now defined?

[fol. 192] A. Sure. I have maps here showing you every well in the field.

Q. How far beyond the defined area that you have there do you think it extends.

A. It's an awfully long field. That field is only 120 miles long; if you will tell me at what point I'll tell you——

Q. Any point.

A. Some places might be zero,—for example, on the north end, take in the vicinity of this lease 4 north, 16 E.C.M. I stated awhile ago that the eastern limits of the Hugoton field, in my opinion would run about fifteen miles east of that well.

Q. Fifteen miles east of the well in section 8.

A. Yes, sir.

Q. Would that take you to the eastern boundary of Texas County.

A. No, sir, not quite.

Q. Is there any place that the field would go east of the boundary line in Texas County?

A. I don't believe it will, no, sir.

Q. Is there any point where the field is narrower than fifteen miles there, east of that section?

A. Yes,—when you get into Texas I believe the field is pretty well—eastern limits is almost defined, in Texas County, furtherest east point that production will go will probably be at the extreme northeast corner of the county, 6 North, 19 east.

Q. How far does the field extend into Kansas?

[fol. 193] A. About 65 miles into Kansas.

Q. Has that been proven by producing wells?

A. Yes, sir, there is production around the town of —— which is in township 24 south, range 26 west.

Q. In your opinion how far is it likely to extend north.

A. Well, I believe that is getting pretty close to the end. It could extend another five or six miles,—might go ten miles.

Q. What is the width of the field at the Kansas line?

A. You want the developed area or the probable area.

Q. I want the developed area and your opinion as to the probable.

A. All right. There is almost thirty miles that is proven and is developed.

Q. What is your opinion as to the likelihood of further development.

A. Well, along with the testimony I gave a few minutes ago I believe the eastern limits of the Hugoton field will

still extend along the state line about 8 or 9 miles east of present production which is in township 35 south, range 35 west in Kansas and to the west the furtherest production that is now present there is in section 17, township 6 north, range 14 ECM, I believe the production will extend westward from that point approximately five or six miles. [fol. 194] Q. Isn't it true Mr. Ellison, that until the outline of the field is defined and proven that the pressure decline method is not accurate?

A. No, I think it is just as accurate now as it ever will be there—taking a large enough area. I have taken eight or ten different areas—my computations on the total amount of gas that has been produced under the average pressure decline and it is surprising how the results are almost the same.

Q. That is all.

[fol. 195] Re-direct examination of Kenneth Ellison.

Mr. Pruet:

Q. Counsel has asked you whether or not in the drainage underneath section 8 involved in this lawsuit—has by migration, by formation under that section eastward and you stated that it had been—now I ask you this, state whether or not to the extent that there has been an actual reduction in rock pressure to that extent has there been any migration?

A. Yes there has been additional gas migrate into Peerless Section, however there has been more taken out than migrated back in, that is where we get the 7.5 pound decline as computed a year ago and 7½ pounds was computed in gas.

Q. Then to the extent of the actual difference or reduction in back pressure—to that extent and drainage by that reduction there has not been any compensation to that extent?

A. To that extent, yes sir.

Mr. Ralston Examines the Witness:

Q. You have been out to the Peerless well in section eight?

A. Yes.

Q. Was it producing any at all?

A. Not that was marketed.

Q. Was it being tested out?
A. Yes.
Q. Was that an official test made by the Commission?
A. I would not say.
[fol. 196] Q. Who did that?
A. Dick Philippe from the Kansas Corporation Commission.
Q. Was one made here?
A. 1945, I believe in September.
Q. That was an official test made by the Representative of the Corporation Commission?
A. I wouldn't be able to give that. They were not able to go out there last week but I came and talked to Trim Capshaw and they advised me that they would accept that report.
Q. Are you testifying as to what you know or as to what someone else told you?
A. I am telling what I know.
Q. Was you out there?
A. No.
Q. Then you was told what was done?
A. I was in charge of having this done but I wasn't sitting on the well.
Q. You know what you was told?
A. I have a letter and was told on the telephone.
Q. That is all.

Earl Pruet examines the Witness further:

As a matter of fact the first test made by the Commission of this state and its representatives in the summer of 45 after the completion of the well—state whether that result [fol. 197] of that test is a record of the Commission?
A. It is.
Q. State whether a written report of Phillippe is in process of being delivered to the Commission?
A. It is.
Q. Do you know what that report reflects?
A. I do.

Witness examined by Floyd Green:

Q. Don't I understand you to say that 14.75 was used as the basis—as used by the Bureau of Mines?
A. Yes.

Q. Isn't that 14.735?
A. It could be.
Q. At sixty degrees?
A. Yes sixty degrees.
Q. Did I understand that that was your recommendation in this case?
A. Yes.
Q. Is that the Bureau of Mines or the Bureau of Standards?
A. Bureau of Mines, that is the method that they recommend.

Witness excused.

[fol. 198] Whereupon, WILLIAM D. WEIDLEIN, being first duly sworn upon oath, testified, as follows, to-wit:

[fol. 199] Witness examined by Earl Pruet:

Q. State your name.
A. William D. Weindlein.
Q. Where do you live?
A. St. Paul Minnesota.
Q. What is your business and profession?
A. I am a Consulting Engineer, I am President of the Midland Gas Transformation Company, I am an officer of the Minnesota Valley Natural Gas Company, that is a distributing company now and buys from other natural gas companies.
Q. What colleges, if any, did you attend and what degrees did you receive?
A. I have a B. A. from the University of Kansas in 1914. I have a Professional Engineering Degree from Stanford after two years resident work at Stanford.
Q. What is the extent of your experience, if any in the production, transportation and sale of natural gas?
A. The original cake that I was credited on was an association with Bank and Greece in Kansas City, it was 21 or 22. It was connected with the valuation of Oklahoma Gas and Electric in Oklahoma. That was for the Corporation Commission. I also had experience in western Kansas in development in Hays Kansas in the year 1932-33, was an associated Engineer of Black and Beech, employed by the State Corporation Commission of Kansas. I made an

inspection of all of the property of the City of Kansas [fol. 200] City and compared studies in the five states they operated in including the producing areas at that time. I made the estimates of the value for the engineering firm, of all the border measuring stations also made the inspections as to certain operating connections of the pipe line, released in the field from Pampa to Wichita Kansas, since that time I have been employed by Mellon Securities, Brown Herrman in N. Y. has consolidated with Edison and Manufacturing Gas Properties in N. Y. and certain investigations in Detroit for investment. I have been connected with a half a dozen others who have gas producing properties.

Q. Are you familiar with valuation engineering in so far as production transportation and sales of natural gas are concerned as a result of your education and practical experience?

A. I think from education and practical experience I am qualified to speak as to operating cost and as to transportation as to what could be paid for gas in the field, predicated upon the analysis of markets.

Q. You are—are you not, familiar with the more or less Hugoton Oklahoma Gas Feld?

A. I am.

Q. Are you familiar with transportation cost of natural gas from that field with reference to markets in reference to Oklahoma, Kansas companies and other points?

(Whereupon Mr. Ralston objected because of incompetent [fol. 201] irrelevant and immaterial—then an oral argument was had off the record).

[fol. 202] Mr. Pruet: If the Commission please, there is a group of people here from Guymon, out in Texas County, and they have their representative here, of the Land Owners' Association, who wants to make a statement and if it could be made at this time they could go home.

Judge Cullison: Oh, we don't want to lose them yet,—we don't want any statement now. If you have some competent evidence to offer that would be different.

Mr. Pruet: We'll ask that Mr. Long be sworn.

H. W. Long, Guymon, Oklahoma, was duly sworn to testify the truth, the whole truth and nothing but the truth.

Judge Cullison: We object to any voluntary statement not responsive to questions,—if Mr. Pruet has some questions to ask, then we'll know what he is trying to elicit and we'll then know when to make our objections if we have any, but if the man is going to make a speech nobody can anticipate what he will say and therefore nobody can object.

Chairman Bond: If you are going to appear as a witness counsel will examine you, but if you are going to make a statement as——

Mr. Pruet: If the Commission please, I'll question him.

Direct examination of H. W. Long.

Mr. Pruet:

Q. You may state your name.

[fol. 203] A. H. W. Long.

Q. Where do you live?

A. Guymon, Oklahoma.

Q. How long have you lived out in that country?

A. 23 years.

Q. What is your business?

A. Real Estate, Oil and Gas Lease Broker.

Q. During the time you have been engaged in that business have you had occasion to become acquainted with the gas industry out there,—the production of natural gas, the marketing of it, and the market facilities and things of that kind, in connection with the gas industry in the Guymon-Hugoton Field?

A. Yes, sir, continuously since 1923.

Q. Just tell the Commission what you know about the history of the gas industry in that Field,—about the marketing conditions generally, and at the conclusion thereof express your opinion in regard to the fair market value or the fair value of natural gas at the wellhead in the Guymon-Hugoton Field.

Judge Cullison: We object to that as a double question, he asked him first what the conditions are, that's one question,—then he asked him to express an opinion on some matter,—we object to it.

Mr. Pruet: I'll reframe the question.

Q. Just state what you know about the gas industry in the Guymon-Hugoton Field, the production of gas in that [fol. 204] Field, the marketing conditions and facilities in that Field, from your knowledge and experience as a real estate man and as an oil and gas man and as a lease broker in that locality?

A. I have been in Texas County since 1923,—I was active in assisting in the first work done toward the development of that section,—as a land owner and actively engaged in the oil and gas lease business I have been familiar with the entire history of the Field, from its inception in '26 when the first well was drilled from which commercial gas has been marketed.

Q. Go ahead.

A. In '26 H. F. Wilcox drilled a well in Texas County about ten miles west of Guymon, producing gas for which they received eight cents per thousand cubic feet. The market was limited. Later, a market was secured——

Judge Cullison: Just a moment,—we object, if the Commission please, to anything other than a current market price. Something that is ancient, obsolete and passed away has no place in this case.

Chairman Bond: Sustained. If you want to you may give a history of the situation out there but when you get down to the market value or intrinsic value of gas then your testimony—the objection is sustained at this time.

[fol. 205] Mr. Pruet: I'm not offering the value back to '26 as any basis for actual market value or the fair market value at this time, but just as a history, his knowledge of the conditions and his basis for his testimony.

Chairman Bond: He may make a statement of that kind to show his experience and knowledge of conditions out there.

A. These leases which were taken out there and the leases which are in existence now without, I think, a single exception, provided that the land owner shall receive one-eighth of the market price at the mouth of the well. Some few years ago Republic Natural Gas came into our area with a reasonable market which has now been lost to Northern Natural and they paid five cents for gas, which was in line with the Supreme Court decision in the case which was mentioned here this morning. Later a large market

came into that area and at the time it came into the area we, for the first time, as individual land owners discovered the true worth of our gas when two of our leading producers got into a bitter struggle over top leases. That created a good deal of excitement and for the first time showed us the true worth of our natural resources. As a result of—final result of the——

Judge Cullison: Is this result only as a history, to give [fol. 206] a background?

Chairman Bond: That's right.

A. (Continuing): Final result of it these two companies are now peaceful conducting their affairs in the field with Cities Service taking the gas from them. We were offered a division order then which gave us four cents for gas instead of depending on the market price provision of our lease. Later into our area came the Phillips Petroleum Company who started developing a market which goes to the Panhandle Eastern on the south side of our county. They fixed a price of 3.6 I believe and explained to us we could either take that or accept their pet division order for market price interpretation. Skelly Oil Company has come into our area the last two or three years. They are now marketing to Cities Service and will pay us four cents provided we will sign a Division order for the life of the lease, at four cents. Now, during this time we have developed a market for carbon black and we have been down here before this Commission before with testimony in connection with carbon black. I think every gas company in the field, with possible exception of the operator, has testified or concurred in testimony in this court that the use of natural gas for carbon black was a destructive use of gas. We are now receiving five cents for gas for destructive purposes. We are here to say to the Court plainly [fol. 207] destructive use of gas should be materially more than five cents. We believe that the law under which those corporations——

Judge Cullison: Now, if the Court please. He is beyond the history. I think questions ought to be asked.

Chairman Bond: Your lawyer will take care of the law, he will ask you questions about price value,—unless you have some experience you want to recite.

Q. (Mr. Pruet): What, from your experience and knowledge in connection with the industry in the Guymon-Hugoton field, in your opinion at this time is a reasonable market value for natural gas at the well head in the Guymon-Hugoton Field?

Mr. Ralston: We object to that for the reason it is incompetent, irrelevant and immaterial, not calling for the market price.

Chairman Bond: Let the witness testify first if he has an opinion, then you can ask him.

A. I have a fixed opinion in the matter, Your Honor.

Q. (Mr. Pruet): What is your opinion in that regard?

Mr. Ralston: Same objection to that,—additional reason he hasn't shown himself competent and qualified to express an opinion.

Chairman Bond: Overruled and exception allowed.

A. It is my opinion that the amount asked for in this case is not excessive.

[fol. 208] Q. (Mr. Pruet): What is that amount?

A. Ten cents.

Q. Per thousand cubic feet.

A. That's right.

Mr. Ralston: Same objection.

Chairman Bond: Overruled and exception allowed.

A. I would like to qualify that statement if the Court will permit or the attorneys will.

Mr. Pruet: Yes, go right ahead.

A. Our group who is here today are, I believe, unanimous. We will accept——

Judge Cullison: We object to that as incompetent, irrelevant and immaterial, not tending to prove any issue in the case. If they are here they can be sworn.

Chairman Bond: Objection sustained.

Mr. Ralston: May we inquire whether this is evidence in support of the case of the dispute as between Peerless Oil & Gas Company and Cities Service or is evidence introduced in aid to establish a regulation fixing price generally throughout the Hugoton Field.

Mr. Pruet: Both.

Mr. Ralston: We object to it as being incompetent, irrelevant and immaterial as to the dispute between Peerless Oil & Gas Company and Respondent and for the further reason it hasn't been shown here that there is not an existing [fol. 209] market price in the field at this time and for the further reason, if there is an existing market price in the field that any other evidence of any other price would be incompetent, irrelevant and immaterial.

Chairman Bond: Overruled. Exception allowed. You may proceed.

Q. (Mr. Pruet): Now, do you have any other or different recommendation to make at this time in regard to a minimum price for natural gas in the Hugoton Field? Other than what you have already stated, *based on expediency and the difficulties that may be encountered by the pipe line companies in readjusting their set-up to take care of the situation.*

Mr. Ralston: We object to that, incompetent, irrelevant and immaterial.

Chairman Bond: Overruled. Exception allowed.

A. I would recommend to the Commission that a price of six to ten cents be fixed on natural gas and if the Commission has no authority to fix that price that under that provision of the statute which provides for waste, that they consider our present marketing 'waste', and shut the entire field in. If this Commission finds they have authority to make such a finding and it is appealed to a higher Court, pending that appeal the entire field be shut in on the basis of the present price being paid is 'waste', under the statute of 'waste'.

[fol. 210] Q. (Mr. Pruet): Do you have any further statements you would like to make as a citizen, to the Commission at this time?

A. Yes, I would.

Q. Go right ahead.

Judge Cullison: Is that in the Legislative hearing or the Judicial hearing?

Chairman Bond: Let the record show that the witness is no longer testifying in this case but simply making a statement as a citizen of that district out there.

Mr. Pruet: Very good,—you may proceed.

A. If it please the Commission, I testified a great deal as to the——

Judge Cullison: If the Court please, we object to that, if it is to have any bearing upon the contest between Peerless and the Cities Service Gas Company, in that it has no competency in any sense.

Mr. Pruet: We will limit the offer of this statement only to the question of the minimum price for the entire field and nit as to the controversy, if any, between the Peerless Oil & Gas Company and the Cities Service Gas Company, and offer it only for that purpose.

Judge Cullison: We don't know what the statement will be.

Mr. Pruet: I don't know either.

[fol. 211] Judge Cullison: It will probably be effusive recommendations in behalf of his neighbors, which is natural. We object to the Commission sitting legislatively and giving recognition or weight to anything only statements of fact. In this respect, if he is posing as an expert,—if he is posing as an expert and giving an opinion he cannot give the opinion on the ultimate fact to be decided by the Commission. He can give an opinion as to facts at this time. Now, Your Honors haven't decided as yet, as I understand, whether you are going to have a full-fledged legislative hearing of the price of gas over the whole part of the Hugoton field.

Chairman Bond: The Commission will await the determination of the argument of the case before we decide those issues.

Judge Cullison: Now, since we don't know what the Commission is entertaining or proposes to do, it is very difficult to voice concrete objections. If what he is going to say bears upon the going price in the field as stated in Your Honors' Order that governs this field, we would have no objection, because he has shown that he lived there a long time and is familiar—if it has no bearing on the going price in the field, there being no application to change the [fol. 212] general order now existing, we will object to such statement in that aspect.

A. I can assure the Commission any statement that I will make will be facts and any conclusions arrived at will be arrived at from those facts. At the conclusion of this state-

ment I will be perfectly willing to stand cross examination on it.

Chairman Bond: Your statement will be made as a citizen and not as a witness and counsel has objected to your testimony and the Commission has overruled the objection and allowed exceptions, and the Commission, after you statement is made, of which it has no knowledge now, will give it such weight and credit as the law and the facts will justify in the final analysis.

A. For the benefit of the Commission, this statement is being made for and on behalf of some sixty land owners and royalty owners who are present in the Court and a statement in which they each will concur in as to the facts surrounding our field. Now, we as citizens believe that our law making bodies wisely intended that the law which is referred to in this case was certainly intended to give to this Commission the proper relief which the individual citizen is entitled to, which is far too expensive to secure in the ordinary judicial court. I would remind the Commis- [fol. 213] sion that the average land owner with eighty or a hundred and sixty acres of gas rights in our field facing that expensive individual lawsuit to prove the facts necessary in connection with market price depend upon you for relief, who would probably never succeed *getting a fair price for this great natural resource of which a large percentage living in this state is living in this field.* Now, this Commission and I and several others testified in the Federal Power Commission hearing in Oklahoma City and recommended to the Federal Power Commission that there are adequate laws on our statute books to preserve the great natural resources of this State without any help, aid or assistance from the Federal Power Commission except their co-operation to take care of when this Commissions' authority reached the State line. We believe in state rights. We believe we can control ourselves better than they can control us from Washington. That was the gist of our testimony before the Federal Power Commission. Now, the information we have is, that generally speaking, the Federal Power Commission are being attacked that they have no authority. Our land owners, just like myself, now come into this Court and we find your authority challenged. Now, if the Federal Power Commission has no authority and this Commission has no authority and we have all signed

leases which we cannot even take one-eighth of the gas if we found a market for it and we are entirely dependent upon the market set by somebody else to determine that, [fol. 214] then I say rank injustice is being done and has been and will be done from now on. They were talking yesterday about weighted price and the going price in our field. *If they had talked about the pressure price we would have known what they are talking about, because to us we deem it a pressure price. We have in our field a good industry.* I'm not an exponent of theirs, we appreciate the industry in our field, we got it after several hearing before this Commission and the Commission wisely granted permission for the use of our great natural resource for both furnace and channel black. We have always before this Commission taken this position, that we wanted more markets, more money,—they were all our friends and we wanted them to remain so and we still feel that same way about them, but it is their inconsistence, when we find Cabot Carbon Company paying five cents for gas used in the channel carbon black plant, four cents in the furnace black plant, which is, according to a lost of testimony in the archives of this group, is a destructive use of this gas. We find after a stripping of the gasoline from the gas not sufficient account to us for it. Most money we are being offered is four cents, except the original money which came in the field, which company is still paying five cents. Now here is another thing. We think that this Commission should either have the authority or we pray they may be given [fol. 215] authority, because in the cases which have been tried before the Federal Power Commission which involves all of the marketing in our field, when the Federal Power Commission ordered them to refund a lot of money because they were earning more than six or six and a half percent permitted of them, they never, as far as I know, could ascertain any statement or inference given to the Commission or the Federal Power Commission and say, "we are buying this gas at a very subnormal price, it's worth a lot more money, let's go back to the land owner and adjust our price and then make this adjustment on a basis of that in our future operations." The land owner was truly the forgotten man and he still is and the man who was originally the inherent owner of the land and all the minerals that was under that land. Now, as we brought out yesterday in an observation by one member of the Court, the result

of the Federal Power Commission hearing, as far as the Company involved was concerned, would have been no difference, as far as their financial condition, if during all this period they had been paying ten cents for gas. Now, we believe this, that there should be some regulatory body, having some jurisdiction over natural gas and it is my conclusion and the conclusion of these boys who are keeping advised. Now, that the Federal Power Commission hearings have been completed, except for the one to be held in Washington next month—I have attended three of [fol. 216] them,—any unbiased Judge hearing that testimony that came into all of those hearings would conclude that there was one outstanding thing in the natural gas industry that needed to be cured and that was the price of gas at the mouth of the well. If that was corrected then true conservation of gas would occur. I have been over the great state of Texas,—*partly true somewhat of this State—you see in Texas thousands of flares flaring gas—it isn't worth saving—it's an absolute wastage of natural resources but when you get down to the economic feature of it, if it isn't worth anything why is it worth saving.* So I say to the Commission it will be the greatest boon towards true conservation of our natural resources to place a reasonable price on it and in that way it will automatically stop much of the argument about the piping of natural gas across the state line and whether we shall let our neighbor in Pennsylvania burn it just like we have the opportunity of burning it here. Now, I wouldn't want to say this as an indictment of all active gas operators or corporations, but there seems to be a spirit of resistance. I would like to remind the Commission of some testimony, no doubt they have in their files in the Federal Power Commission hearings, which I am sure the Commission is being advised of and information which comes to our land and royalty owners in our county. In the testimony on April 8th of the [fol. 217] Federal Power Commission at Charleston, West Virginia, Mr. E. E. Roth, a petroleum geologist with the Columbian Engineering Corporation made the flat statement that the pipe line companies could pay ten cents for natural gas at the well head in the southwest portion of the United States. The executive of a company that is operating in this state testified at that same hearing, J. W. Carnahan, Vice-President and General Manager of Hazel-Atlas Company, who testified he owned a plant at Ada,

Oklahoma, upon Cross examination by Mr. Wimberly of this State who is on the Federal Power Commission, he asked him if they could pay 30 cents for gas at their Ada plant and still make a profit, and his reply was, he wouldn't want to have to pay that much but he could do it and operate profitably and he is paying eleven cents for gas now,—that is coming home to us. Now our group which I represent, are a group who crave action—the ordinary individual likes direct action. The result of a lawsuit that is filed and is seven to ten years in being affirmed or confirmed is not very satisfying to the ordinary individual. We believe that the Commission has full authority because if the Corporation Commission has no authority, who has any authority over us. If the Commission has no authority over price then we are forced to go only to one place and that is to our civil courts and each individual finance individually a lawsuit in order to get redress from the present price, [fol. 218] which we are receiving for gas,—that is the only alternative which we have. We think the Commission does have authority. If the Commission, at the conclusion of this hearing believe they don't have authority we believe that the thing to do is to shut our entire field in on the theory that it is waste, because, after all, waste ultimately ends up from a conclusion over the economic end and it will be economic waste to allow gas to be marketed from our area at this low price and certainly at the price Judge Cullison suggests, 1.8 cents, which I am quite sure they are receiving for their 7/8ths of their gas,—if that's all we can get for this great natural resource I say shut the field in. That would be an effective way to get a very rapid conclusion that might not be reached through our courts if it is appealed and the general things that happens for many years. In other words, our people who are living there now feel if there is going to be any reward from the consequence of this natural resource that is found out there we went to get it during our lives. I thank the members of the Commission.

Q. (Judge Cullison): One question on the legislature aspect,—do you favor a maximum price that the Commission should put on the gas out there?

A. Judge, I would answer this question in this way. We want to be fair. We realize the destructive nature, con- [fol. 219] sidering the amount of capital invested, clear onto

the ultimate conclusion of marketing, our Land Owners would welcome this Commission finding, fixing a price of six cents for the time being.

Q. As a maximum?

A. As a minimum.

Q. Do you have any idea on the maximum?

A. We confine ourselves to a minimum with this idea in mind,—we don't think six cents anywhere near represents the true value of natural gas, but if the Commission would find a price of six cents at this time, as a current price, where then, say two years from now, three years from now, or five years from now we want to come back before this Commission with proof of what it takes to show, we should be receiving a higher price, it can be done. Only reason we recommend it at that price because we realize a disturbance in the capital structure might result in urging the Commission to say ten cents at this time.

Q. You want to keep your foot in the door and have no maximum.

A. That's right. We want to get along with you at arms length across the table.

Commissioner Weems: How many people do you suppose there are in Texas County interested directly or indirectly, through being land owner or royalty owner, how many people there are.

[fol. 220] A. Eliminating employees of the industries, now since we have a lot of industrial development out there, I would say ninety percent as the minimum people in our county are directly or indirectly and a large—I believe sixty-five percent of our people are directly. I would say ninety percent directly or indirectly interested in this.

[fol. 221] Vice Chairman Weems: There are sixty people here today that are interested.

Earl Pruet: At least sixty people that are land owners.

Vice Chairman Weems: Do you have their names for the record?

Earl Pruet: They have a petition here——

Mr. Cullison: What is the population of that county?

(Witness Lona.) (Witness examined by Mr. Cullison.)

A. There was 6400 no about 10,000 in the county.

Q. Men, women and children?

A. That is right.

Q. Do you think that there are about two million consumers that would be effected?

A. We don't think so, if we had given our bid in to the Federal Power Commission, we never, and we hope you give relief?

Commissioner Armstrong: Your group are advocating a general relief?

A. Our interest is uniform over the county among the group here.

Mr. Ralston examines the witness:

Q. As I understand it, what you want is the Commission acting in a legislative capacity to fix a price of gas at six cents and everyone that purchases it pay six cents.

A. We don't know whether it is legislative or judicial, [fol. 222] we sit here and listen to you argue and we don't know, we wonder if anyone else knows.

Q. In reference to the testimony in getting back from the legislative part, to the lawsuit between Peerless and Cities Service, you testified concerning the price of gas out there in the Guymon-Hugoton pool in Texas County, is that correct?

A. Yes sir.

Q. You mentioned some sales of gas, you are acquainted as I understand with the history of the country and the pool?

A. That is right.

Q. And you are engaged in the real estate business and oil and gas business and lease and a royalty owner?

A. That is right, I get a check from Cities Service every month.

Q. What prices are being paid now?

A. You are talking about plant owners' prices?

Q. Yes what prices are being paid for purchases of gas like is involved in this case, Peerless selling gas to Cities Service, what prices are being paid for like purchases?

A. Well I can only testify to what the land owner is receiving. I don't know between the producer and your company.

Q. You don't know what the prevailing price is being paid?

A. I know what the land owners are getting, I know that Republic Natural Gas Company is paying five cents and [fol. 223] selling the gas to Cities Service, I know that Phillips is selling to Panhandle Eastern, they pay 3.6 and if you sign that agreement they will pay four cents but Skelly will pay you four cents, they are marketing to Cities Service providing you agree to accept that price.

Q. You mean what they are paying the land owner?

A. Yes.

Q. Do you know what price is being paid the Pipe Line Companies?

A. They haven't let me in on that.

Q. You don't know that going price in the field?

A. They are deducting one-half cent for transportation and going on second hand information on that, we presume it is the truth.

Q. Don't you know that they are paying four cents at the wellhead and one-half cent for gathering the gas?

A. I don't know, that is hearsay testimony, Cabot Carbon Company, they are paying five cents for that particular plant in which the Commission have required that minimum to be paid—on the other plants, I think that they pay four cents because it is fractional 4.2 or 4.87 depending on the weight.

Q. Isn't that OPA Ceiling?

Earl Pruet: We object to that as incompetent, irrelevant and immaterial, the OPA evidence is the best evidence.

Chairman Bond: Sustained.

Q. Do you know if Panhandle Eastern are selling a company near Hooker?

[fol. 224] A. On an old contract?

Q. What is the price?

A. I don't know, it is an old contract.

Q. Three and a half cents?

A. It's an old contract.

Q. 3½ to 4 cents now?

A. On an old contract.

Q. Is it four cents?

A. They are paying the land owner the same amount of money.

Q. What are they paying?

A. Four and five cents for some of it.

Q. Then you don't know only what prices are being paid the land owner, you don't know what is being paid by the purchaser in that county?

A. Phillips Petroleum Company made the statement to our royalty owners, they said that they made a contract with Panhandle Eastern for four cents, five cents and five and a half cents for the next five years and a twenty year contract.

Q. Do you know of any other sales?

A. The balance of the sales, except Cabot Carbon Company for carbon black are going to Cities Service, in other words, Cities Service is the big market in our county.

Q. Why are you interested in us raising the market gas in the field?

A. I think that we are entitled to it and if OPA has any-
[fol. 225] thing to do with it, we are going to proceed on that organization.

Q. Now you said four and a half cents on that contract with Phillips and Panhandle Eastern, are you sure about that?

A. It's memory with me, that statement was made.

Q. Isn't it correct Panhandle Eastern agreed to pay Phillips four cents per thousand cubic feet for all gas delivered in the first five years?

A. How much?

Q. Four cents per thousand cubic feet delivered during the first five years and that was made in 1943?

A. You probably have better information than we do, they take the carbon out and getting us skinned.

Q. You don't know what the price is?

A. No the companies don't confide in me very much.

Earl Pruet: Counsel has asked you about what Skelly was getting for their gas who are they selling to?

A. Cities Service.

Earl Pruet: No doubt they know what they are paying for it?

A. Bill Skelly said they did.

Earl Pruet: I have a petition of Texas County Land and Royalty Owners Association, I am going to have it marked by the Reporter as Exhibit 30 and offer it for what it's worth.

Mr. Cullison: We object to Exhibit 30 if you please.

[fol. 226] (Mr. Ralston reads Exhibit 30 to the Commission.)

Chairman Bond: The Commission will give everyone a fair and impartial trial, and if someone will testify as to the signatures on that petition, the Commission will receive it for what it's worth.

Mr. Cullison: No foundation has been laid and he is not an expert in handwriting.

Floyd Green: He may have circulated the petition.

Chairman Bond: Do you know the signatures, did you see them sign them?

A. No sir. Everyone of them are here as far as I know.

Chairman Bond: Will you read the signatures Mr. Pruet and have each of the witnesses stand.

A. I know the signature of O. E. Chenault. I say that is his signature.

Mr. Cullison: There has been no foundation laid, no foundation laid as an expert in handwriting, that is a separate profession unless he has seen him sign it.

A. I have received enough checks from him. (Remains on stand.)

EXAMINATION OF ROYALTY OWNERS

Chairman Bond: Mike Quinn. Did you sign this petition?

Mike Quinn: Yes sir.

Chairman Bond: Did you sign this petition of your own [fol. 227] free will and accord?

Mike Quinn: Yes sir.

Chairman Bond: And you want the price of gas raised by this Commission?

Mike Quinn: Yes sir.

Chairman Bond: That is what you came down here for?

Mike Quinn: Yes sir. I own sixteen hundred acres of land up there. I read the petition over. I took that time to do that.

Chairman Bond: Leroy Mouser. Did you sign the petition?

Leroy Mouser: Yes sir.

Chairman Bond: Did you sign the petition of your own free will and accord?

Leroy Mouser: Yes sir.

Chairman Bond: And you want the price of gas raised?

Leroy Mouser: Yes sir.

Chairman Bond: What is your name?

H. C. Petrowsky: H. C. Petrowsky.

Chairman Bond: Did you sign that petition of your own free will and accord?

H. C. Petrowsky: Yes sir I did.

Chairman Bond: This man over here, what is your name?

M. R. Ebersole: M. R. Ebersole and I signed the petition too.

[fol. 228] Chairman Bond: The next man there.

H. W. Wocker: My name is H. W. Wocker.

Chairman Bond: Did you sign this petition?

H. W. Wocker: Yes sir.

Chairman Bond: You want the price of gas raised?

H. W. Wocker: Yes your Honor, I certainly do.

Chairman Bond: The next man there.

Harry B. Lancaster: My name is Harry B. Lancaster.

Chairman Bond: Do you want the price of gas raised by this Commission?

Harry B. Lancaster: Yes sir.

Chairman Bond: Next.

Charles Steinknehler: My name is Charles Steinknehler.

Chairman Bond: What do you say?

Charles Steinknehler: I want all I can get.

Judge Cullison: They may have signed that petition under duress, I think the question should be if they voluntarily signed the petition.

Chairman Bond: The next man there.

M. C. Young: I signed the petition of my own free will and my name is M. C. Young.

Chairman Bond: This man here.

C. E. Darty: My name is C. E. Darty.

Chairman Bond: Did you sign the petition?

C. E. Darty: Yes sir.

[fol. 229] Chairman Bond: Did you sign the petition of your own free will and accord?

C. E. Darty: Yes sir.

Chairman Bond: And you want the gas price raised?

C. E. Darty: Yes sir.

Chairman Bond: And that is what you came down here for?

C. E. Darty: Yes sir. I am in the unitization there. I signed the petition after reading it over. I own 1600 acres.

Chairman Bond: The next person there.

J. W. Elmore: My name is J. W. Elmore. I signed the petition.

Chairman Bond: Of your own free will and accord?

J. W. Elmore: Yes sir.

Chairman Bond: For what purpose?

J. W. Elmore: To get the prices raised.

Chairman Bond: That is why you came down here?

J. W. Elmore: Yes sir.

Chairman Bond: Where do you live?

J. W. Elmore: About five miles from there.

Chairman Bond: Next man.

J. W. Duncan: My name is J. W. Duncan.

Chairman Bond: Did you sign this petition?

J. W. Duncan: Yes sir.

[fol. 230] Chairman Bond: Did you sign the petition of your own free will and accord and there was no coercion?

J. W. Duncan: No sir, there was no one who made me sign the petition. I did it because I wanted to.

Chairman Bond: What is your name?

Charles E. Wilson: Charles E. Wilson.

Chairman Bond: Did you sign this petition of your own free will and accord?

Charles E. Wilson: Yes sir I did.

Chairman Bond: Next.

John G. Wiggins: My name is John G. Wiggins. I signed the petition of my own free will.

Chairman Bond: Why?

John G. Wiggins: To raise the price of gas.

Chairman Bond: The next man there.

Charles D. Wiggins: My name is Charles D. Wiggins.

Chairman Bond: Did you sign the petition of your own free will and accord?

Charles D. Wiggins: Yes sir.

Chairman Bond: For what purpose?

Charles D. Wiggins: To raise the price of gas.

Chairman Bond: Alright.

Charles Lee: My name is Charles Lee.
Chairman Bond: Did you sign the petition?
Charles Lee: Yes sir.
[fol. 231] Chairman Bond: For what reason?
Charles Lee: Raising the price of gas.
Mr. Long: The next one Judge is Henry W. Wacher, Jr.
Chairman Bond: Mr. Wacher did you sign the petition?
Henry W. Wacher, Jr.: Yes sir.
Chairman Bond: For what reason?
Henry W. Wacher, Jr.: To raise the price of gas.
Mr. Long: The lady there is Christine W. Hitch.
Chairman Bond: Mrs. Hitch did you sign the petition of your own free will and accord?
Mrs. Christine W. Hitch: Yes sir.
Mr. Long: Henry C. Hitch.
Chairman Bond: Mr. Hitch did you sign this petition of your own free will and accord?
Henry C. Hitch: Yes sir I did.
Mr. Long: W. G. Hughes.
Chairman Bond: Mr. Hughes did you sign the petition?
W. G. Hughes: Yes sir.
Chairman Bond: Who induced you to sign this petition?
W. G. Hughes: A little royalty that I have.
Mr. Long: J. D. Key.
Chairman Bond: Mr. Key did you sign this petition?
J. D. Key: Yes sir I sure did.
Chairman Bond: For what purpose did you sign the petition?
J. D. Key: To get more money for the gas.
[fol. 232] Mr. Long: The next name, Judge Bond is Mrs. Ruby Rizzly. I will testify that it is her signature on the petition. She is the wife of our Congressman up there and couldn't be there today. I know her signature.
Chairman Bond: The next one.
Mr. Long: Laura A. Gilmore.
Chairman Bond: Mrs. Gilmore did you sign this petition?
Laura A. Gilmore: I sure did.
Chairman Bond: Why did you sign the petition?
Laura A. Gilmore: So I will have more money to ged around on just like all the rest of them.
Mr. Long: A. P. Gardner.
Chairman Bond: Did you sign this petition?
A. P. Gardner: Yes sir I sure did.

Chairman Bond: For what purpose?

A. P. Gardner: To raise the price of gas.

Mr. Long: Fred Tuttle.

Chairman Bond: Mr. Tuttle did you sign the petition?

Fred Tuttle: I did.

Chairman Bond: Did anyone make you put your signature on that petition?

Fred Tuttle: No sir Judge they sure didn't. I knew what I was signing.

[fol. 233] Mr. Long: William Bruner.

Chairman Bond: Mr. Bruner did you sign this petition?

William Bruner: I did.

Chairman Bond: Of your own free will and accord?

William Bruner: I did. That is right sir.

Chairman Bond: For what purpose?

William Bruner: To raise the price of gas.

Mr. Long: George Wright.

Chairman Bond: Did you sign this petition of your own free will and accord?

George Wright: Because the Cities Service Oil or Gas Company didn't consult me when they started paying me four cents for my gas and I wanted a chance to tell them about it and that I didn't like it.

Mr. Long: Stanley Mars.

Chairman Bond: Did you sign that petition? Is that your signature Mr. Mars?

Stanley Mars: I sure did sign it Judge. I want the prices raised and want all I can get.

Mr. Long: Mrs. Pearl Bonheur.

Chairman Bond: Mrs. Bonheur did you sign that petition?

Mrs. Pearl Bonheur: Yes sir.

Chairman Bond: For what purpose?

Mrs. Pearl Bonheur: To be able to get more royalty.

[fol. 234] Mr. Long: Mrs. Rosa Quinn.

Chairman Bond: Mrs. Quinn why did you sign the petition?

Mrs. Rosa Quinn: To get more money for the gas.

Mr. Long: Albert Heimsoth.

Chairman Bond: Did you sign this petition?

Albert Heimsoth: Yes sir.

Chairman Bond: For what purpose?

Albert Heimsoth: To get more mongy.

Mr. Long: Pansy McDaniel.

Chairman Bond: Did you sign the petition?

Pansy McDaniel: I sure did.

Chairman Bond: For what reason?

Pansy McDaniel: To get more money.

Mr. Long: Elmer E. McDaniel.

Chairman Bond: Mr. McDaniel why did you sign the petition?

Elmer E. McDaniel: To get more money.

Mr. Long: Tell the Court Mr. McDaniel if you had any pressure put on you in signing this petition?

Elmer E. McDaniel: No sir I sure did not.

Mr. Long: Paul E. Wright.

Chairman Bond: Mr. Wright did you sign the petition?

Paul E. Wright: Yes sir and no one didn't twist my arm either.

Mr. Long: Mrs. Margaret Wright.

[fol. 235] Chairman Bond: Did you sign this petition?

Mrs. Margaret Wright: Yes sir.

Chairman Bond: Of your own free will and accord?

Mrs. Margaret Wright: Yes sir.

Chairman Bond: For what purpose?

Mrs. Margaret Wright: The same as the rest, I think we ought to have more money.

Mr. Long: Mrs. Elizabeth Long.

Chairman Bond: Mrs. Long did your husband use any influence on you to get you to sign the petition?

Mrs. Elizabeth Long: I signed it because I didn't want to work so hard.

Mr. Long: Charles Williams.

Chairman Bond: Mr. Williams did you sign this petition?

Charles Williams: I signed this petition because I want more money. I think we are entitled to it.

Mr. Long: Mr. Donald Hughes is absent but I personal- am acquainted with his signature and I know that he signed the petition with — any influence used on him.

Mr. Long: Mrs. Caroline L. Blue.

Chairman Bond: Did you sign it Mrs. Blue?

Mrs. Caroline L. Blue: Yes sir, I signed it and because — wanted *too*.

[fol. 236] Mr. Long: That is all, Your Honors.

Chairman Bond: The Commission will receive the petition for what its worth.

[fol. 237] Mr. Weindlein Recalled to the Stand and Examined by Mr. Pruet:

Q. What is your name please sir?

A. William D. Weindlein.

Q. You are the same William D. Weindlein who has testified with us two or three days ago, before the argument arose?

A. I am.

Q. And you have been sworn and have previously detailed your testimony from the stand?

A. I have.

Q. You have given us, as I recall, your qualifications, your experience and your knowledge of the nature of your business with reference to production, transportation and distribution?

A. I have.

Q. Your knowledge of the natural gas industry in the Guymon Hougton Field and particularly with reference to the business and facilities of the Cities Service Company, respondents in this case?

A. I have.

Q. Now from your experience and from your knowledge of these things which you have detailed and about which you have testified what, in your opinion is a reasonable and fair price of natural gas at the wellhead in the Guymon Hougton Field?

Mr. Cullison: To which we object as incompetent, ir-[fol. 238] relevant and immaterial and not sufficient foundation having been laid involving the judicial hearing collateral element and invading the province of this Commission on the ultimate fact to be decided by them.

Vice Chairman Weems: Overruled and exceptions allowed.

Mr. Cullison: And for the further reason that there is no showing in evidence that there is not a going price in the field.

Vice Chairman Weems: Go ahead and answer it.

A. I say that a fair price for gas in the Guymon-Hougton field at this time to be six cents based on cubic feet of gas of 30" per degree and 60 degrees F.

Commissioner Armstrong: How do you get that price?
A. That is equivalent to about six and a half cents on a two pound basis that gas is being purchased at this time.

Mr. Pruet Continues:

Q. From your knowledge of the natural gas industry, with reference to the production, transportation and distribution of natural gas, your knowledge of the particular field in question, the transportation companies that are taking gas out of that field in their facilities and the things in connection therewith, including markets, state whether or not in your opinion the taking of natural gas from that field at a price lesser than that which you have testified or at a price from 3.6 to 5 cents per thousand cubic feet measured [fol. 239] at two pounds above 14.4, state whether or not such lower price from 3.6 to 5 cents per thousand cubic feet taking of gas in that field at this price, in your opinion constitutes economic waste in that field?
A. I do.

Mr. Cullison: To which we object for the same reason as we stated awhile ago.
Vice Chairman Weems: Same ruling.

Mr. Pruet Continues with the Witness:

Q. From your experience and knowledge in regard to these matters, I have referred in previous questions, the knowledge of production, transportation and distribution of natural gas and your knowledge of the Guymon Hougton Field, state whether or not in your opinion the price of natural gas has a direct and reasonable relationship to the Conservation of natural gas?
Mr. Cullison: We object for the same reason and that is not in the province of an expert to testify.
Q. Does this have such a relationship?

Mr. Cullison: That is a conclusion of law.
Vice Chairman Weems: I am sorry that on yesterday I was out when you qualified the witness as an expert.
Mr. Pruet: I have qualified him as an expert.
Mr. Cullison: We object.
[fol. 240] Vice Chairman Weems: The objection is overruled and exceptions allowed.

A. It definitely has such a relationship.

Mr. Pruet Continues with the Witness:

Q. Now then, state in these factors—of your knowledge and experience of the natural gas industry, whether or not the fixing of a higher price than 3.6 to five cents per thousand cubic feet measured at two pounds 14.4 would be conducive to and assist in the conservation of natural gas?

Mr. Cullison: Same objection.
Vice Chairman Weems: Same ruling.

A. I consider that to be a factor with its limitations, that after a full analysis in markets in the state of Minnesota and Iowa and now being presently served and Kansas City, Missouri, that there is a top limit that could be paid for gas above which would be economically sound for this to compete for other fields, there must be a market.

Mr. Cullison: I move to strike all of that part not responsive as to whether it has a relationship to Conservation.

Q. Now Mr. Witness, is there a limitation which you wish to desire to place——

Mr. Cullison: He is going ahead—why don't you qualify him, you said you would.
[fol. 241] Mr. Pruet: That part which he says in regard to the limits which they would get, we will let that part of that answer be stricken.
Vice Chairman Weems: So ordered.

Pruet continues with the witness:

Q. You are stating that a higher price, 3.625 measured at two pounds above 14.4 would be condusive to and assistant in conservation of natural gas in state whether or not there is a qualification, you would like to place that in that answer?
A. Yes.
Q. What qualification or limitation would you place upon that answer?

Mr. Cullison: Same objection.
Vice Chairman Weems: Same ruling.

A. I would place a top limit of nin- cents per standard cubic foot of gas of 1000 to 1005 BTU's per cubic foot.

Q. Now do you know what the Mid-Continent Gas Transportation Company is, is that a corporation or what?

A. The Mid Continent Gas Transportation Company is a corporation organized under the State Laws of Delaware. It was incorporated to engage in the business of transportation of Natural Gas.

Q. What, if any is your connection with that Company?

A. I am president of the Mid Continent transportation Gas Company.

[fol. 242] Q. It's what?

A. Mid Continent Transportation of Natural Gas Company.

Q. In connection with your duties with that company have you made an extensive survey of the conditions existing with reference to production of transportation of marketing of natural gas to be produced in the Guymon Hougton Field?

A. That investigation was carried on under my direct supervision, and considerable of that work was done by myself personally.

Q. Is your company, that company the Mid Continent Natural Gas Transportation Company contemplating the building of a pipe line from the Guymon Hougton Gas Field in Oklahoma to markets in other states?

A. Yes.

Q. State whether or not whether your company has taken any steps toward building such a pipe line?

A. Mid Continent has at this time on file with the Federal Power Commission, an application of Certificate of Convenience and Necessity to construct and operate a pipe line from the Hougton Field through Kansas and to the vicinity of Kansas City Missouri and Kansas City Kansas and such other vicinities. We expect to file an amended application to extend that line to carry into Northeast Missouri, Eastern Iowa and Minnesota and the last three named states none are presently served with natural gas.

[fol. 243] Q. If you are granted such a certificate of necessity will such a pipe line be built by your company?

A. Definitely, however it depends on contracts with distributing companies.

Q. If you are granted that certificate and the line is built tell the Commission what price you propose to pay for natural gas at the wellhead in the Guymon Hougton Field?

Mr. Cullison: We object because of all of the reasons set out before and he is trying to prove by a specific instance, a general market price.

Vice Chairman Weems: The objection is perhaps well taken but we would like to hear the answer.

Exceptions allowed.

A. At this time the Mid Continent has offered to produce in the Guymon Hougton Field contracts and we have assurance of competing with—Peerless Oil and Gas Company, the price in such contract and offered to other producers—six cents per million BTU's, which will be equivalent to six cents for a standard cubic foot 1000-1005 BTU.

Vice Chairman Weems: What would you pay that if you had a line in there?

A. We would if we had these markets, yes sir.

[fol. 244] Judge Cullison: Give us an exception.

Chairman Bond: Exception allowed.

A. Six cents at atmospheric pressure is equivalent to about 6½¢ at the basis above atmospheric pressure, and that price is at the wellhead.

Gross-examination.

By Judge Cullison:

Q. You assume in your testimony that the price out there is, at the Field, between 3.6 and 5, do you not?

A. I have made no statement as to the price in the Field.

Q. I asked you if you answered the question, based on that assumption?

A. Well, that's right, yes.

Q. You are thoroughly familiar with that Field out there, the Guymon Hugoton Field?

A. I am thoroughly familar with it from the viewpoint of a producer of gas and from a purchaser's viewpoint. I have gone personally to the Federal Power Commission and have read any number of contracts that are on file with the Federal Power Commission.

Q. Well, it's permissible for an expert to testify, I believe, from his knowledge gained by experimentation and research,

—do you know what is the weighted average price out there, —approximate it as near as you can.

A. I doubt if anyone is familiar with the weighted average in that Field. What is the weighted average?

[fol. 245] Q. The weighted average price is the price paid, taking into consideration the quantities sold at the respective different prices.

A. Well, how do you arrive at your weighted average?

Q. Well, ordinarily an expert qualified as well as you are, ought to know that,—you take the amount sold at one price and multiply it by that price and put it in the right hand column, then you take the amount sold at another price and carry it over, after multiplying the amount by the price at which it was sold, giving consideration to all the different prices and amounts, then you add up your left hand column sold at the respective price, and divide it into the right hand column and, as I see it, you will get the weighted average price.

A. Well, I'll agree with you that that is the way to do it, but I want a complete understanding,—it's easier for you to talk than it is for me,—I can't talk as well as you can.

Q. You're doing a pretty good job,—putting your best foot forward——

A. All right——

Q. Now, assuming that would give you the weighted average price, what would you estimate is the weighted average price paid out there in that Field?

A. Well, definitely, I have not made a calculation as to that.

Q. So you are not informed as to prices out there?

A. I will say this, that we——

[fol. 246] Q. Wait a minute, just answer the question,— you are not informed, generally, as to the prices out there, are you?

A. Well, I wouldn't say that I know the prices, all the prices paid out there, ——

Q. What is the range of prices paid out there?

A. I also maintain——

Q. Wait a minute, I insist again that the witness answer that question.

A. Well, eliminating from consideration the transmission companies, if you'll eliminate those——

Q. Yes, for the purposes of this question we'll eliminate them.

A. Well, I think the price of gas being delivered is around four or four and a half cents, depending upon the pressure measurement.

Q. That's delivered at the pipeline, isn't it, in that field, that four and a half cents?

A. Well, some of the contracts are at the wellhead, some are at local points on the system of the transmission company and some of them at the compressor station,—they vary.

Q. The vast majority of the gas sold there would you say is sold for four cents at the well or four and a half cents at the pipe line?

A. I would say yes,—you should have some knowledge of that—I imagine you are the largest producer.

Q. Well, I'm not a gas expert, I'm just a lawyer, or threatening to be a lawyer,—so the going price, in the vast [fol. 247] majority of cases, is four cents at the well and four and a half cents at the pipeline?

A. Most of the gas is priced at that, but——

Judge Cullison: Wait a minute,—we move to strike out his "but", as not responsive and evidently he wants to offer a voluntary suggestion clearly off the question.

The Witness: Well, I have a right under the Constitution of the United States to answer as I see fit——

Judge Cullison: Well, maybe there are some rights left under the Constitution,—if there are, I don't want to deprive you of any of them. In the sense of a prevailing price, four cents at the well and four and a half cents at the pipeline is the prevailing price being paid there at this time, is it not?

A. I have answered that.

Mr. Pruet: We object, as repetition.

Judge Cullison: No, I said "going price" in the previous question.

Q. In the sense of a prevailing price, four cents at the well, and four and a half cents at the pipeline are the prevailing prices being paid in that Field at this time,—is that true?

A. That's my understanding, but I happen to know——

Judge Cullison: Now you can make a speech, if you want to and the Court permits you, but we don't want any voluntary statements from you.

Q. Mr. Weidlein, in giving your opinion as to the value of [fol. 248] gas out there, what the value of gas out there ought to be, you did not take into consideration the market price being paid in the Field, at all, did you?

A. No.

Q. Now, do you know, however, that the Companies selling are strong companies in the Mid-Continent Field,—Skelly Company, Republic Natural Gas Company, Phillips, and others,—they are all strong companies, aren't they?

A. That's right.

Q. They are in no manner, so far as you know, affiliated with the purchasers of gas in that Field who are purchasing from them?

A. Not financially affiliated or by holding company——

Q. Well, do they operate in any manner only by arm's length contract?

A. That would be an expression of opinion, any answer to that question. From our efforts to secure gas I would say——

Q. Wait a minute,—Are they operating in any manner other than by arm's length contract?

A. Well, I don't know just what you mean by that question.

Q. Well, are they operating any way other than under the terms of a contract?

A. Well, I have no knowledge as to whether they are operating at arm's length, or otherwise.

Q. There is a lot of gas moved out of that Field to the different states, Oklahoma, Kansas, Missouri, Texas and [fol. 249] Nebraska,—cut out Texas—isn't there, at the price you have stated?

A. Yes.

Q. Now, the upshot of what you intend to testify is that these prices ought to be raised, isn't it, Mr. Weidlein?

A. That's right.

Q. And that's about all you intend to testify to before this Commission, isn't it? On that point?

A. That's right, and also as to what what I thought was a fair price.

Q. I mean on that point?
A. Yah.

Q. You say you have a contract with Peerless at six cents?
A. I said we are negotiating a contract with them, based on a price of six cents.

Q. You have tendered such a contract, at a six-cent price?
A. Yes, sir.

Q. Have they accepted it?
A. They are arguing a little about the point of delivery.

Q. They haven't accepted it, then?
A. No, but we have definite commitments from them.

Q. In your direct testimony you said six cents at the well-head?
A. Yes, it is a question of our attempt to have them sell it at another point of delivery.

Q. Have you a copy of that contract?
A. I have a blueprint of it.

[fol. 250] Q. You have a copy of that contract?
A. I have a blueprint copy.

Q. Can you produce it here in evidence?
A. Well, I don't believe,——

Mr. Pruet: We object to the question as incompetent, irrelevant and immaterial, the witness has stated he has a copy of an unexecuted contract——

Judge Cullison: I don't know whether Your Honor was in the room or not but this witness testified that they had a contract with Peerless at six cents, at the well. He has said that he was going to pay that and bind himself by a legal contract——

Chairman Bond: The Commission doesn't care to know what an unexecuted contract shows or is,—the Commission wants to just know what a legal, binding contract shows, and the Commission will pay no attention to a contract that hasn't been executed. Exception is allowed.

By Chairman Bond:

Q. Mr. Witness, do you have an executed contract, one that has been signed?

A. I have no executed contract, I have a letter stating that that acreage will be——

Chairman Bond:

Q. Well, does that letter state that that contract will be executed?

A. No.

Chairman Bond: Well, we don't care for it.

[fol. 251] Judge Cullison: When he comes here making a voluntary statement,—I want to make a motion,—we move that all his testimony about his willingness to pay six cents in the Field and his tender to Peerless be stricken, for the reason——

Chairman Bond: The Commission will strike all the testimony pertaining to an unexecuted contract, but he may testify to his willingness to pay that price.

The Witness: I have so testified.

Judge Cullison: Give us an exception.

Q. Commissioner Armstrong: You have made such an offer?

A. Yes, sir.

Q. Commissioner Armstrong: And it has been accepted?

A. Yes, sir.

Judge Cullison: Now, we object to that,—he says he has a contract, he says he has it here, and he says, "I will not let you see it",—Your Honor, being a lawyer, knows that contract is the best evidence and knows very well that that contract, signed or unsigned, together with the letter accompanying it, is the best evidence.

Commissioner Armstrong: It seems to me that testimony as to what somebody is willing to pay for something is some evidence of what it is worth.

Judge Cullison: If he has written evidence or some writing concerning the transaction, that is the best evidence.

[fol. 252] Chairman Bond: It becomes the best evidence, if it is signed. This contract has not been executed and it is stricken from the record.

Judge Cullison: We except.

Q. Now, you haven't made any unconditional promise to pay six cents for gas at the well, have you?

A. Why, no.

Q. That contract contains many qualifications and conditions, Doesn't it?

A. (No answer)

Mr. Pruet: We object to that.

Q. I'll withdraw that question,—your offer, then, contains, or is accompanied by many qualifications and conditions?

A. Why, yes,—there are other similar contracts that have been executed in the Hugoton Field——

Judge Cullison: We move to strike out all following the word "yes".

Chairman Bond: Sustained.

Q. Now, among those conditions is one that you will build a pipeline to Kansas City;—isn't that a fact?

A. Well, that is under the present application with the Department, but I want you to know that we are going to file an amended application.

Q. You are not in position to buy any gas until you build that proposed pipeline?

[fol. 253] A. That's right.

Q. Now, in your proposition to pay six cents is the condition that you deliver gas to the Kansas City Gas Company and the Wyandotte County Gas Company, is that correct?

A. That's correct.

Q. Now, those are markets of the Cities Service Gas Company, at this time, are they not?

A. They are supplying them gas at this time.

Q. If you didn't have that market or couldn't market it there you wouldn't pay six cents for gas there, would you?

A. Yes.

Q. You would have to have a market?

A. We would have to have a market?

Q. So, in your application you say in substance that you are going to take our markets at Wichita and our market at Kansas City, Missouri, and our market at Kansas City, Kansas, as justification, financially, for permission to build that pipeline, don't you?

Reporter's Note: At this point the Chairman announced a recess of the Commission until 1:30 P. M., on this date, May 8, 1946.

At 1:30 P. M. on May 8, 1946, the Commission reconvened and the trial of this cause proceeded as follows:

[fol. 254] Judge Cullison:

Q. The stenographer says there is pending a question unanswered, "so in your application you say in substance that you are going to take our markets at Wichita and our markets at Kansas City, Missouri, and our markets at Kansas City, Kansas, as justification financially for permission to build that pipe line, don't you".

A. I want to restate,—under the Cities Service Gas Company contract——

Q. I think that can be answered yes or no.

A. That is no more your market than our market. If we can sell gas in there at less than you can sell it, it's our market.

Q. I don't think that is an answer,—is that what you mean, our market will be your market and justify the line?

A. The natural gas act specifically states——

Q. I insist on the question,—this gentleman has intervened in this case very anxiously and earnestly because he is going to take our market and build a pipe line and bring prosperity out here. Now, I am asking to show what this pipe line is based on. This question is perfectly clear, he can answer yes or no,—I am asking him if that is what he means.

Mr. Pruet: We say the form is not proper, we object to the form of the question, assuming something not in evidence. It assumes it is their markets and the witness has a right to state whose markets they are, and in answering [fol. 255] that question he doesn't have to answer yes or no.

Judge Cullison: He testified that our contract with these people that another company can come in and contract with them.

Chairman Bond: The question is argumentative in a way. You can ask the witness in a way that isn't argumentative.

Judge Cullison: This is cross-examination.

Chairman Bond: Ask him how he intends to obtain this market.

Judge Cullison: You Honor is putting the rule in examination in chief.

Judge Cullison:

Q. You, in your application, as a justification for the granting of this permit, you assume that you get the market

of Kansas City Gas Company in Kansas City, Missouri, don't you?

A. I wish to answer that in this way. There is no such thing as I understand, as an exclusive franchise. Now, the City, in a hearing before the City Council in Kansas City, Missouri, they asked, I was asked——.

Judge Cullison: I object to all this as not responsive.

Chairman Bond: Answer this question, yes or no, and then make your explanation.

[fol. 256] Judge Cullison: Read the question.

A. We will get part or all of that market.

Judge Cullison:

Q. And you assume——

A. Now wait a little bit. I had a right to make a qualifying statement on that.

Judge Cullison: We object to any unresponsive voluntary statements. Mr. Pruet can bring them out in redirect and dress them up as he pleases.

Chairman Bond: The witness may make an explanation.

Judge Cullison: To which we object, the question having been fully answered and being a voluntary statement not evoked by the question.

Chairman Bond: Overruled and exception allowed. The witness may explain his answer.

A. To my knowledge there is no such thing as an exclusive franchise. Under the proceedings now before the Security Exchange Commission and your Public Utility holding Act, the Cities Service type holding company has been ordered by the Security Exchange Commission to divest itself of its utility properties. In that connection there was a hearing in Kansas City, Missouri, before the Council at which the council is trying to decide whether they will purchase that property and if they purchase that property they asked us would we be willing to serve them and our answer was "yes". I don't know whether that is your market our [fol. 257] market or whose market it is.

Judge Cullison: I move to strike the answer on the grounds of the objection.

Chairman Bond: Overruled. Exception allowed.

Judge Cullison:

Q. But that is the market that you are expecting to get on which to base permission to build this line.

A. And the reason——

Q. Well, is it?

A. Partly, yes, and other markets.

Chairman Bond: You asked this witness a question and he says "partly". When he says "partly" the witness can explain.

Judge Cullison:

Q. Now, the other part of that partly qualification is Kansas City, Kansas and The Wyandotte Gas Company.

A. That's right.

Q. Another part is the Gas Service Company serving 169 towns, I believe you state here,—isn't that correct?

A. I would like to answer that question by saying that in refiling, asking for an amended application, we will eliminate the towns that the Gas Service Company supplies.

Q. You aren't going to bother us in those places.

A. No, sir, we won't bother you there, we think you will take care of those towns.

Q. The other part you had in mind was Wichita, Kansas. [fol. 258] A. I told you we expect to eliminate that,—isn't that a Gas Service town?

Q. I wouldn't know.

A. You seem to speak for the distributing companies. I find that the president in Kansas City speaks for you.

Q. I beg your pardon, it is a Gas Service town,—used to be Western Distributing Company, I have gotten a little mixed up.

A. That is an affiliate.

Q. You say 97 percent of the gas used by these companies that I have mentioned concerning which you have answered, is furnished by Cities Service Gas Company.

A. Well, if that is a true copy of the application that was filed with the Federal Power Commission, why that is true, and I arrive at that from some record in the Federal Power Commission.

Q. It is some record of the Federal Power Commission, you say we furnish 97 percent of that gas you expect to get.

A. That is from some official record, I have secured that.

Q. You believe that,—you set it up in here.

A. Yes, we believe that.

Q. You know the Federal Power Commission is holding a hearing to determine what is the fair rates in these towns, don't you?

A. Well, I think that has been upheld by the Cities Service Gas Company as you stated this morning.

Q. There was one.

[fol. 259] A. Yes, that's right.

Q. And it resulted in a cut of approximately 35 percent in the rates up there.

A. I wouldn't say "rates". It was in dollars.

Q. Yes, you don't know what percent that would be.

A. I don't know what percent of the rates because that is a matter for your determination.

Q. Now, you state 'we are asking to build another pipe line and the publics' interests will be best served by denying us the rights to build that pipe line and grant you the right to build the pipe line you want to build,—that's right, isn't it?

A. Now, that statement, if that is a true copy, applies to the increased capacity that your company asked for at Nelda, but it isn't necessarily a new line from the Hugoton field to Kansas City. It is from some town up in the eastern part of Kansas.

Q. Assuming that to be qualified that way, you say that the public interests be served by denying us the right to enlarge our lines and grant you a certificate to build new ones.

A. That's right.

Q. Now, you are going to build your pipe line from Liberal, Kansas, along side of Wichita, up to Kansas City, Missouri.

A. We are going to extend from near Liberal, Kansas, to Kansas City, Missouri, and we are going to amend that [fol. 260] application to go through northeastern Missouri, Eastern Iowa and into Minnesota.

Q. But there is nothing on record as to that letter part yet.

A. No, there is no official application.

Q. That is just an intention on your part.

A. And a definite intention.

Q. Then you say, you are going to build a gathering line

50 miles northerly from Liberal and get gas up in Kansas to take to your lines.

A. We intend to purchase gas in Kansas and gather it,—of course we will have the right to amend that at a future hearing before the Federal Power Commission.

Q. You have a right to file an amendment to that.

A. Sure.

Q. Probably we will be given notice of that.

A. Probably the Federal Power Commission will.

Q. You haven't done it yet.

A. No, sir.

Q. You have no contracts for the construction of that line or the purchase or lease of the facilities you mention in here, that you expect to build.

A. No.

Q. You didn't aver to the Federal Power Commission you have any contract for the purchase of gas.

A. No.

[fol. 261] Q. And you didn't have or you would have so stated.

A. That's right.

Q. Now, there is one curious thing in this contemplated pipeline that is to raise the price of gas in this field, that is, you say as Peerless is prepared to dedicate in excess of 114 thousand acres of gas reserves to the supplying of the pipelines' proposed market to the Kansas City Gas Company, why did you slight the Wyandotte County Gas Company and the other towns served by us, that you expect to have?

A. For the simple reason that Kansas City, Missouri, is very much interested in securing as long a reserve as they can.

Q. So that gas will be taken only to Kansas City, Missouri.

A. As that is proposed at this time, we probably will amend that when a new application is filed.

Q. You will probably change that.

A. Yes, we can change our mind too.

Q. So you didn't then and don't now have any contract for the purchase of gas in this field.

Mr. Pruet: We object as repetition.

Judge Cullison:

Now, you intimate on page 6 of your application that the reason you ought to be allowed to build a new line from Liberal, Kansas up to Kansas City, Missouri, is that the present system is inefficient and has excessive operating expenses and excess manpower, that is what you mean [fol. 262] to intimate, don't you?

A. I hope I'm not going to be limited to a yes or no answer on this.

Q. You either do or do not, yes, you say you do, no, you do not.

A. My statement is this in respect to that. With a new modern system of a pipe line from the Hugoton field to Kansas City, that we can under-sell Cities Service Gas Company at any time if they continue to operate the present system as operated.

Q. Because we are old, obsolete and inefficient, is that right?

A. Well, I might make that answer as a statement for publication officially but I don't believe you want that in here.

Q. I called for your opinion, if they want to express an opinion they would probably be here,—is it your opinion we were old, inefficient and obsolete?

A. Well, the records on file with the Federal Power Commission show that the original system——

Q. No, No,—I mean what do you mean to intimate.

A. Yes.

Q. Now, you are going to have a sort of streamlined modern system altogether, have efficient manpower, aren't you?

A. We are going to decrease manpower by putting additional investment in capacity.

Q. Into what?

A. Into capacity, to provide capacity.

Q. You are going to have some turbine engines or some- [fol. 263] thing like that or jet powered engines.

A. You never can tell what these times will bring out.

Q. You will not have those old reciprocating engines like we use.

A. They won't be like that one in your Schulter station.

Q. I mean these old engines, go up and down, reciprocating, four cycle gas reciprocating engines, that is what we have.

A. I think generally all of yours are like those.

Q. Have you ever seen the Straight Station?

A. No, I'm not acquainted with the new line.

Q. You aren't prepared to deny that is the best station in the world.

A. Yes, and I think you ought to have laid that line in another direction.

Q. You got out of K.U. in 1914, have you been working in the gas business ever since?

A. When I qualified here the other day I stated my original connection with the gas industry was about 1921 and 1922. I think that was fully covered in my qualifications, that was after I spent a thousand and one days in the Army with the 35th Division in the Tenth Engineers.

Q. After you won the war you got in the gas business.

A. I helped with it, along with President Truman in his Division.

Q. Who did you work for the first time.

[fol. 264] A. Black and Veatch.

Q. They're not in the gas business are they?

A. They are consulting engineers, they have designed gas systems.

Q. How long did you work for them?

A. I think probably about two years up there off and on in the summers, for a pe iod of four years or five years.

Q. When did you next work for them after '26?

A. It was in the summers, between 31 and '32.

Q. 1932?

A. That's right.

Q. What were Black & Veatch engaged in in '32 when you worked for them?

A. The particular job—that is, one of the particular jobs they were engaged upon was the valuation of the Cities Service's properties, Cities Service gas transmission—there was some other, American pipe line was still in there but they were doing that job for the State Corporation Commission of Kansas.

Q. They were working for the State Corporation Commission of Kansas?

A. That's right.

Q. What did you do.

A. I made the physical inspection of all your town border stations that were constructed at that time. I priced and evaluated all of this construction with E. V. Black, the

[fol. 265] senior partner in that firm, who testified. I also made certain inspections regarding the condition of all your compressors along the Pampa to Wichita line. I also looked at the above structures of all your wells at that time, in Oklahoma, Kansas and down in southeast Missouri. At that point you are now paying sixteen cents for gas.

Q. Well now, if the Court please, after he told what he did he says I now think you are paying 16 cents for gas, I move to strike that as not responsive.

Chairman Bond: Motion sustained.

Judge Cullison:

Q. Where was that case being held, Topeka, Kansas?
A. Topeka, Kansas, yes, sir.
Q. Were you ever there?
A. Yes, sir.
Q. Who were the Commissioners?
A. Well, you are asking me something now——
Q. You don't remember?
A. No.
Q. I am testing your memory, who were the lawyers?
A. Ward Hatcher represented the State Commission.
Q. Who else?
A. I think on the Cities Service side was an attorney out of Kansas City. I think your engineer by the name of —— was there.

[fol. 266] Q. Who else?
A. I think that is immaterial from there on.
Q. You can't remember, can you?
A. I don't have to remember. I know we priced this equipment, looked at your equipment above ground in practically five states.
Q. Your memory is all right but your disposition is bad.
A. So is yours.
Q. I want to test your memory?
A. All right, I've got a good one.
Q. There wasn't any objection to the Cities Service Gas in that suit at all, only the rates.
A. And they are still selling at that rate yet in most of your states to the east.
Q. Notwithstanding your, after winning the war, your getting into that case, that case was settled without a

change except the payment of $197,000 and costs by us, wasn't it?

A. You are asking something——

Q. Can you remember?

A. The case was settled, but I could qualify that probably a little bit—I don't think I—there may have been other reasons that case was settled. I don't know.

[fol. 267] Mr. Cullison examines the witness:

Q. You mean the Democrats finally sold out to us?

A. No.

Q. It was in the courts about five years and went to the Supreme Court?

A. Yes that is right.

Q. And you never testified?

A. No.

Q. And this man was there all of the time?

A. I don't know.

Q. You didn't see him now after you got through helping to try that in 1931, I think you said 1932, so up until 1935 or 36, when that thing ended, then what did you do, who did you work for?

A. In 1935 in the spring of 1935 I had an Engineering Company of my own in Kansas City, from sometime in 1935 until the spring of 1936.

Q. Where was your office?

A. Finally in the building that the Panhandle Eastern Office was in.

Q. Midland?

A. No it was across the street from the Continential Hotel.

Q. Continental Hotel?

A. Yes sir.

[fol. 268] Q. What did you do after that brief period of working for yourself?

A. With Mellon Securities Organization in Pittsburgh.

Q. How long were you with them?

A. From the spring of 1936 to about the middle of 1938.

Q. Is that the Mellon that was the Republican Secretary of the Treasury, that the Democrats tried to send to the penitent-ary for evading income tax?

Mr. Pruet: We object to that.

Chairman Bond: Sustained.

Q. He was not in the penitent-ary when you worked for him?

Mr. Pruet: We object to that.

Chairman Bond: Sustained.

Q. After you got through with Mellon who did you work for I mean in a commercial way to make a living?

A. Subsequent up to that time, I have been a Consultant.

Q. Where was your office after that?

A. In the New York Building in St. Paul and the Ramsey Tower, I live in St. Paul Minnesota.

Q. You live in Minnesota. When did you incorporate this company of yours?

A. You have the records there, I will have to look at it, whatever the records show.

Q. Was it October 1945?

A. Whatever those records show.

[fol. 269] Q. You mean you want this to refer to your application for incorporation?

A. I think that calling the date is preposterous, if the date is on there, then that is it.

Q. I don't know whether it is on there or not.

A. I can find it for you.

(instrument is handed to the witness.)

I thought the date was on here, I can furnish it to you if you want it, I don't remember it off hand. I have other things to remember.

Q. You don't know when you were incorporated?

A. It was Oetober, I think, last year.

Q. October 1945?

A. That is right.

Q. Does your organization have any tangible property at this time?

A. No tangible no.

Q. What intangible property does your company have at this time?

A. Intangible would mean to me the money available to develope this project.

Q. The money your corperation has, you said they didn't have any tangible, now I ask you what intangible property do they have?

A. I beg your pardon I was thinking of perhaps property as tangible, if cash is tangible, we have suffecient cash at

this time to do this work that is necessary for this project.
[fol. 270] Q. Didn't you state recently to Dun and Bradstreet that the corporation didn't have any assets other than a low four figure bank account?

A. I expect they got it from a bank.

Q. With recent interview of William D. Weindlein.

A. That is me.

Q. That he stated a low four figure bank account?

A. Who was this man?

Q. Dun and Bradstreet.

A. Who was this man in the conversation?

Q. I don't know.

A. They have not been in my office.

Q. How much money does your company have in the bank to build this line and pay this big price?

A. At this time, I have assets and cash.

Q. Your company in the bank?

A. I imagine all of one thousand dollars right at this time, but this week it will be better.

Q. What other money does your company have that isn't in the bank, all they have is less than one thousand dollars in the bank?

A. None.

Q. And no tangible property?

A. I didn't say no money elsewhere.

[fol. 271] Q. I just asked this of you.

A. Let me answer that we will have above five thousand dollars.

Q. I am asking what you have now, what your company presently has in money?

A. In checks, I expect there is two that have come into my office that I know of since I left.

Q. What do you know of for sure?

A. I don't know.

Q. All you know is less than one thousand dollars?

A. Your wish is entirely sufficient at this time.

Q. Now in your application for permission to build this line you made a statement of the amount of gas that you expect to sell each year for the first five years?

A. Yes sir.

Q. And now you set out your operating expense didn't you?

A. That is right.

Q. In your application you set out $4,261,850.00 as your overall operating expense didn't you?

A. If that is the figure in that report which I don't have.

Q. Alright refreshing your recollection, isn't that a fact?

A. That is like asking the Cities Service man to give the operating expense in their annual statement.

Q. And that overall operating expense also includes depreciation and taxes didn't you set that out?

[fol. 272] A. It didn't include depreciation and insurance, that is probably in the fixed charges.

Q. Read this and see if it is included then?

A. Alright, it has depreciation and taxes.

Q. It does?

A. Yes.

Q. Your directing operation expense is $920,000.00, isn't it?

A. The first year.

Q. Yes the first year?

A. That is right.

Q. And leaves $3,341,850.00 won't it? If you subtract $920,000.00 direct operating expense from overall from depreciation from $4,261,851.00 it will give $3,341,850.00 won't it?

A. It may be an error in it because Exhibit six is depreciation and interest, and it shows $1,754,000.00 and there is the fixed charges and the depreciation should be eliminated in the $4,261,851.00.

Q. That is an error then?

A. Yes.

Q. That is your error?

A. Yes that is right.

Q. After you get that $3,341,850 which is a result of deducting direct operating expense and take from this $1,027,370.00 for depreciation after which you have stated you have left $2,314,480.00, representing purchase gas, [fol. 273] taxes and insurance, isn't that correct?

A. I think if you will take the difference between gas revenue and fixed charges and operating expense that will give you the equity capital.

Q. I am talking about income?

A. Why the gross income is $6,626.00.

Q. I am talking about purchase of gas.

A. And total costs from purchases—4,261 plus dollars and 1,754.00 dollars.

Q. We are not talking about equity capital but your operating expense, the operating gas that you will sell, now the $1,027,370.00 which would be depreciation upon your physical property involved, at the rate you have set out in there, you would have left, $2,314,480.00 to cover gas purchase taxes and insurance wouldn't you?

A. You will have to give me those figures, and let me figure it out.

Q. I have given you those figures that are in your report.

A. Alright, give them again so I can put them down. The gas revenue, $6,626,470.00.

Mr. Green: I don't see the re*vele*ncy of this and the competency of some petition which he filed with the Federal Power Commission.

[fol. 274] Mr. Cullison: They show that it ought to be raised to six cents and we are trying to show that it is a fantasy and can't be done, and that he can't do what he has proposed to do.

Mr. Green: And you will prove this by his own petition because of the inaccuracy of his own petition?

Mr. Cullison: That is what we hope to do.

Mr. Green: Alright.

Mr. Cullison continues with the witness:

Q. Go ahead.

A. System operating cost, the first year, the gathering system will be maintained by others, that pipe line $60,000.00 that is gathering system—now this relates to the gathering system $120,000 meter regulator dehydration plant $50,000, main line compressor system.

Q. You will have a dehydrating plant?

A. That is right, don't you usually take the moisture out of the gas before it goes into the main line. Main line compressors cost $310,000—forty miles, 6 inch pipe line $150,000.00. Field Communication $50,000; Supervision expense $200,000; Direct operation $920,000; System fixed charge, 1,027,370.00; interest 727,500, that makes $1,754,870.00 which is the fixed charges and that word depreciation should be out of $4,261,850.00. That includes the cost of gas.

That is a mistake in there then?

[fol. 275] A. Yes.

Q. Have you told the Federal Power Commission that you made a mistake?

A. No but we will suggest to them that there is an error.

Q. Did you tell them?

A. Not yet, I am glad that you brought that to my attention, that will be brought out at the hearing

Q. Now you have $6,627,470.00 that is gas operating return for the first year?

A. That is right.

Q. You have $4,261,850.00 as operating expense included as depreciation?

A. That is right.

Q. You said to cut that out.

A. Yes.

Q. That leaves $1,464,620.00 doesn't it Mr. Weindlein?

A. After you go from the six million.

Q. Subtracting these two that we mentioned and we have $1,464,620 remainder?

A. You said $6,626,000. Its $4,464,620.00, that is a difference of better than two million dollars. Its $2,364,620.00.

Q. Yes, sir.

A. Alright.

[fol. 276] Q. Then you take 1,027,370.00, your depreciation that would leave you $1,470,250.00 dollars as a total return from operations and out of that you would have to pay interest. Now are you going to borrow all of this money except just a little, won't you have to borrow it—the fifteen million you will borrow on 3½ bonds and six million at 4% series notes and the return on whatever common stock you sell—that will be eating up your $1,437,-250.00 that is in there for that purpose.

A. For interest charges and return on equity capital, $1,237,250.00 I want to make a statement that there is subject for negotiation between whoever will be the underwriters of the project and the company—it doesn't definitely state that there will be done certain things, it is just proposed that we do that.

Q. You are going to pay interest on the Twenty-one million you sell bonds for and return on all the stock you sell.

A. That will leave us $727,500 of interest charges and leaves $509,750 for the equity capital for the first year.

Q. $509,750.00?

A. $509,750.00 and this interest rate of today, I am sure

that we will do better then that on the prices on the bonds. That will leave more money in equity capital.

Q. You are theoretically figuring on getting back all of your undertaking to arrive at what you just stated to me?

[fol. 277] A. I am figuring on what I consider to be an average operating condition that I may expect. I want to restate that at the present time I am an officer of a distributing company that is buying better than one-half million dollars worth of gas and we know something about distribution.

Q. One half million dollars worth of gas?

A. In excess of that and I know what we can sell it for for industrial purposes.

Q. That is a pretty small amount of gas per year.

A. That isn't bad, The whole gas revenue is twelve or fourteen million, we buy one-half million.

Q. You are talking about what you buy and you are also talking about profit?

A. We get in excess of nine hundred thousand dollars profit for that gas. I think that you are trying something here that we can work out before the Federal Power Commission in that hearing and again I want to state that we are refiling our application.

Q. I am told and ask if it isn't a fact that you said you would like this to be done—$4,261,850.00 and you have only given us one item of $920,000 which leaves about $3,300,000 to be accounted for?

A. Well it may be that these figures are up with the Engineering Company, J. F. Prichard.

[fol. 278] Q. That contemplates securing the markets are set out in the manner stated in the application—to be applied to reach the results stated here?

A. Yes sir.

Q. If you don't get the contract or present customer in Kansas City Gas Company to sell to—your plan couldn't be supported at all?

A. This present application yes sir, but we are going into territory where no natural gas is used.

[fol. 279] Q. You said you were not going into north Missouri?

A. Northeast Missouri.

Q. What are your plans in respect to Carrollton and that area?

A. We are not looking at Carrollton, at all.

Q. You are not going to take that away from us?

A. We're not taking anything away from anyone,—they're going to give it to us if we can get it. We can put gas up there for less money than you folks are and pay more for it than you are.

Q. Unless you do your line wouldn't be supported, would it?

A. All right, there's St. Paul, Minnesota, Eau Claire and La Crosse, Wisconsin, Waterloo, Marshalltown,—those are not——

Q. Who is serving St. Paul now?

A. There are two, at the present in there. It's a matter of some 825 miles to St. Paul.

Q. All right, if this one is costing $25,000,000.00 and more what would one like that cost?

A. Sixty to seventy million.

Q. And you have less than a thousand dollars in the bank at the present time?

A. Well, we have a letter——

Q. Wait a minute,—let Earl ask you that—you have less than $1000.00 in the bank at this time?

A. Yes,—there is lots of money available, though.

Redirect examination.

By Mr. Pruet:

Q. Counsel indicated there was a mistake in the figures [fol. 280] there,—I will ask you if it isn't true that the only mistake there was *was* one word out of place——

A. That is the correct figure,—without including "depreciation" those figures are correct.

Q. And the depreciation is included in another place?

A. That's right.

Q. State whether or not "depreciation" is included in your figures in another place?

A. Depreciation is included in another place.

Q. State whether or not each item set forth in that statement is correct, a correct item, and state whether or not they check?

Judge Cullison: Wait a minute,—do you mean "harmonize"?

Mr. Pruet: With the exception of one word that is out of place, in this application, the figures are correct.

Q. Now, then, Judge Cullison has repeatedly asked you if you were not trying to take these markets away, tell the Commission what the contract between Cities Service and the Kansas City Gas Company provides in that respect.

Judge Cullison: We object to that,—not the best evidence.

Chairman Bond: Sustained, not the best evidence.

Q. State whether or not you personally know that all of those contracts have a provision with reference to——

Judge Cullison: We object,—not the best evidence.

Chairman Bond: Sustained.

Mr. Pruet: Judge Cullison, do you have those contracts here?

[fol. 281] Judge Cullison: Earl, if we haven't we can get them.

Mr. Pruet: I want your contracts of purchase and contracts of sale,—you told me last week you would have them here.

Judge Cullison: I said there were 389 of them, and I handed you these (referring to instruments held in his hand) and told you all the parties and all were stated in here and asked you if that wouldn't be sufficient and you said "yes", and I don't have them here,—isn't that right, Earl?

Mr. Pruet: Well, I understood you would have them. You said it was quite a task and I told you I wanted them, anyway.

Judge Cullison: Well, didn't I hand you these and didn't you say that's what you wanted?

Mr. Pruet: I said it was if it showed your contracts, but I don't see anything in here that shows me what your contracts are.

Mr. Pruet: I'll offer in evidence an instrument marked Exhibit 31 which appears to be a contract between Cities Service Gas Company, a Delaware Corporation, and the Gas Service Company, a Delaware Corporation, The Kansas City Gas Company, a Missouri Corporation, and the Wyandotte County Gas Company,——

And we offer also Exhibit 32, which is a letter with rate schedule attached, from Kansas City Gas Company to Cities Service Gas Company, with an endorsement by the Cities Service Gas Co., concerning the rate.

[fol. 282] Chairman Bond: Exhibits 31 and 32 are received.

Reporter's Note: Above exhibits, with all other exhibits received in evidence are attached at the close of the testimony and are made a part of this record.

Mr. Pruet: Beginning with the last paragraph at the bottom or near the bottom of page 2, exhibit 31 and ending with the word "price" in the fourth line from the top of page 3 exhibit 31, is this language (Counsel reads the matter designated)—isn't that provision in all your contracts?

A. Judge Cullison: I'm not on the stand,—I'll admit that language is in there.

Mr. Pruet: In your contract with that distribution company?

Judge Cullison: Well with those shown there.

Q. Mr. Weidlein, state whether or not your company has made the necessary arrangement for the financing of this project?

A. We have a letter from the Otis Company, signed by its President, Mr. William specifying certain terms upon which they will undertake the financing of it.

Judge Cullison: We object, if you are stating the contents of a letter, and we move that the statement of the contents of the letter be stricken out.

By the Witness:

A. If I may, I would like for that statement in there to be read as my answer to that question.

Judge Cullison: If they are going to talk about a letter, [fol. 283] and this man has that letter, we don't want him to summarize it,—we want him to produce it before Your Honors.

Chairman Bond: The letter is the best evidence.

By the Witness:

A. I don't have the letter but I will be willing to submit a copy of that letter.

Mr. Pruet: All right, we'll ask leave to offer in evidence, when it can be supplied, a photostatic copy of that letter, the letter from Otis & Company.

Judge Cullison: Now, if the Commission please, we have no objection to that if they will say when they will supply it.

Mr. Pruet: Well, during the trial of this case.

Judge Cullison: All right.

Q. Mr. Weidlein, state whether or not in your offer you can and do propose to buy gas in the Guymon-Hugoton Field, at a higher rate than Cities Service is now paying and will charge, at Kansas City and other points, a lower rate than they are now selling it, and make a profit?

Judge Cullison: We object to that as incompetent, irrelevant and immaterial, and not tending to prove any issue in this case.

Chairman Bond: He may state what he will pay for gas,—well, let him answer that. Exceptions allowed.

A. I do.

Cross-examination.

By Judge Cullison:

Q. Are you familiar with the method of metering gas at [fol. 284] the wellhead in the various fields throughout the country?

A. I would like to——

Q. I asked you if you are generally familiar with the method of metering gas at the wellhead in the various fields, whether it be 14.4, 14.75, or what.

A. Yes.

Q. Are you generally familiar with the method used.

A. Yes.

Q. Do you know what method the Bureau of Mines uses, or the Bureau of Standards?

A. Mr. Pruet: We object to that as not tending to prove any issue in this case.

Chairman Bond: Overruled—exceptions allowed.

Q. Do you know what method the Bureau of Mines and the National Bureau of Standards uses?

A. Well, I'd have to qualify, right now, on the Bureau of Standards,—on the Bureau of Mines, it is——

Q. What method is generally used throughout the United States?

A. The gas measurement rules are issued from a new division set up in the Number Two Bulletin of the A. G. A. Association,—that's the way we buy gas in Minnesota and I understand that's the one they use.

Q. It is based on different——

A. Yes, there are different bases.

[fol. 285] Q. Throughout the Mid-Continent area it is figured at 16,4, is it, usually?

A. It is generally at two pounds above atmospheric or some other specified pressure.

Q. What do they in West Virginia,—what do they use in West Virginia, if you know?

A. Well, I haven't checked that recently.

[fol. 286] Judge Cullison:

Q. In stateing in your application that you could and would sell gas in Kansas City, Missouri, and Kansas City, Kansas and at the other places alluded to in your application, at a cheaper rate then we were selling them, did you mean the rates we had been receiving under the contracts before the cut by the Federal Power Commission or after?

A. Well, it is my opinion—that is an opinion on my part, looking at the reductions that were put in on the Denver line——

Q. Now, that is a simple question. Do you mean the rates before or after.

A. After, that is the rates, in my opinion, you would put in.

Q. You mean you would sell gas cheaper than the rates you thought we would put in pursuant to the act of the Federal Power Commission?

A. That's right.

Q. Do you know what we intended to put in up there?

A. No, I don't.

Q. So it is an unknown factor.

A. That's right.

Q. That you are comparing it with.

A. Yes, sir.

Q. You can sell cheaper than an unknown factor if it goes to the selling price of gas, that is correct?

A. Yes, although I think you will agree with me the rates you are going to put into effect——

[fol. 287] Q. You don't know what we are going to put in effect.

A. No.

Q. And that is unknown now so far as you are concerned.

A. Yes, sir, subject to the Federal Power Commission.

Q. That's right.

Mr. Pruet:

A. Were you able to make a pretty fair estimate what the rates would be, based on the findings of the Federal Power Commission?

A. Yes.

Q. That's all.

Judge Cullison:

Q. Alright, what was that estimate.

A. The estimate is on the basis of Kansas City at 15½ cents for firm gas, something in excess of that and 23½ for firm excess gas as defined.

Q. You think that is what we would do under the Federal Power Commission Order of an aggregate cut of approximately 35 per cent.

A. I think yours will be in excess of that. Now you again might have to compete with us.

Q. You don't know what we know, what we are going to file there.

A. No.

Q. If we don't know it, you couldn't know it.

A. No. You don't know what the Federal Power Commission will accept.

Q. That's right, so it's a perfectly unknowable thing from [fol. 288] many standpoints.

A. That's just the same as in this line from Kansas City. The Federal Power Commission will determine whether you build it or whether we build it, isn't that raght?

Q. So you are comparing sales price from an unknowable standpoint.

A. Yes, sir, that is my opinion.

Mr. Pruet:

Q. Best judgment.

A. Best judgment.

Mr. Cullison:

Q. Your best judgment is the result will be in your favor.
A. That's right.
Q. That's all.

(Witness excused.)

[fol. 289] M. L. MAYFIELD, a witness being called and having been sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Pruet:

Q. State your name to the Commission.
A. M. L. Mayfield.
Q. Where do you live?
A. Houston, Texas.
Q. What is your business, profession or occupation?
A. I am registered professionally as a petroleum and natural gas consultant.
Q. What colleges have you attended and what degree or degrees did you receive.
A. I have attended Oklahoma University, graduated with a degree in Mechanical engineering in 1931 and took graduate work in petroleum engineering 1932-33.
Q. What special training have you had.
A. Immediately after leaving school I was employed by the Slick Oil Company in the Oklahoma City field and stayed with them until going to work for the Empire Oil & Refining Company in April 1934, with the Empire Oil & Refining Company which is now the Cities Service Oil Company, I worked as trainee engineer in the production department and during my first work with them I was located in Oklahoma City, the Seminole area, the Bartles-[fol. 290] ville general office, Western Kansas, New York office, and then in 1937 was appointed division petroleum engineer for East Texas, Gulf coast and southwest Texas areas. I worked in the east Texas Division until 1941 at which time I resigned to accept a position as chief petroleum engineer for the Cotton Valley operators committee at the inauguration of the unitized operation of the re-

cycling program in that field. This work involved the establishment of production and injection programs, development of technique for testing and checking and on the cycling program a study of gas reserves, possible utilization of such reserves and I served as engineer to the engineering committee. In February 1942 I resigned to accept appointment as analyst for the Office of Petroleum Co-ordinator in Houston, Texas, District 3, which embraces the states of New Mexico, Texas, Arkansas, Louisiana, Mississippi. Shortly thereafter I was appointed assistant district director of natural gas and the gasoline division and the agency later became the Petroleum Administrator for War. As assistant director I had the responsibility of checking applications for gas condensate drilling, gas gathering lines, natural gasoline plants, recycling plants, dehydrating plants, as a matter of fact all new gas and gas condensate construction in the five states I have enumerated. I remained with the Petroleum Administrator [fol. 291] for War until I believe April 1944 at which time I resigned to become technical advisor and engineer to the natural gas and natural gasoline committee of P.A.W. District 3. This committee was and industry advising committee composed of many of the leading gas and gasoline executives and I served with them until after the War. Approximately a year ago I started as a consultant in petroleum and natural gas primarily for gas problems. Since that time I have been engaged in several studies on the availability of reserves, utilization of gas, general engineering and other problems within that scope. I have written several articles and recently was expert witness for the State of Texas at the Federal Power Commission hearing.

Q. That hearing at Houston, Texas?

A. Yes sir.

Q. Have you covered your training now and practical experience particularly with reference to the production, utilization and conservation of natural gas—can you think of anything further that would be of value to the Commission?

A. I might add, during my experience with the P.A.W. I had the responsibility of aiding the industry in an advisory capacity to obtain special hydrocarbons, such as iso-butane, Isopentane, hexanes and heptanes, as well as checking and investigating new methods for utilization of natural gas.

This also involved the checking of gasoline plants which [fol. 292] processed the gas before it was transported and involved the checking of certain special aviation gasoline processing such as alkylation and isomerization.

Q. Can you think of anything further along those lines in regard to your experience that might be of value to the Commission in evaluating your testimony?

A. I think probably one of the most important studies made was 2-3 dimethyl butane which is a Phillips Petroleum development, which is also called di-isopropyl perhaps by Phillips. It is a rich mixture for blending aviation gasoline, it is one of the recent developments of the war. Diisopropel or 2-3 dimethyl, is probablyt he last war development for aviation gasoline, is a rich mixture blending agent and the significance of this development is due to the fact that it utilizes ethane and propane fractions of natural gas to make aviation gasoline.

Q. Did you, during the course of your work and study, have you become familiar with the Guymon Hugoton field in Oklahoma?

A. Yes, sir, I made some investigation and study of that field.

Q. Will you state to the Commission the difference between dry natural gas and wet natural gas.

A. Natural gas as produced may be found either associated with oil or in the formation by itself,—regardless of whether the gas is produced in conjunction with oil or by itself, it may either be considered dry natural gas or a [fol. 293] so-called wet gas, that is, containing the heavier hydrocarbon components such as butane, isobutane, pentanes, hexanes and heptanes and heavier hydrocarbons.

Q. Is the wet gas what they make gasoline out of?

A. Yes, sir, through absorption facilities the heavier hydrocarbons are removed for recovering natural gasoline from liquid petroleum the gasious hydrocarbon components such as butane and isopentane, and after the absorption or the stripping of the heavier hydrocarbons the resulting gas may be considered a dry gas which is predominantly methane and ethane.

Q. What are the general characteristics of natural gas produced in the Guymon Hugoton field.

A. Well, the general characteristics are such that it may be considered a relatively dry gas. It contains ap-

proximately .35 gallons per thousand cubic feet of gas, liquifying with a specific gravity of .70. In the Guymon-Hugoton area the B.T.U. is approximately one thousand per cubic foot. It will average somewhere in excess of eighty per cent of methane, therefore it may be considered a dry gas.

Q. State whether or not it is possible to use both types, both dry and wet natural gas in the manufacture of chemicals.

A. Yes, it is possible. However, before I want to discuss that I would like to——

Judge Cullison: I think you answered it. You told him [fol. 294] it was possible.

A. All right.

Mr. Pruet:

Q. Will you give a brief explanation of the methods commonly employed and the products commonly manufactured in the form of chemicals from dry natural gas.

Judge Cullisson: We object to this question as incompetent, irrevelant and immaterial pertaining to no feature in this case. I anticipate from the trend that is now becoming apparent he is going to try to show by this witness the intrinsic value of gas by showing all the things of value that could be manufactured from it out there. Now, if that be true, I can't see any—it is entirely incompetent, there are no such factories out there. It is a hypothetical thing, there may never be those factories out there.

(Argument was had off the record.)

Chairman Bond: The Commission will hear the testimony. If it has no applicability it will reject it.

A. Well, I think probably one of the most—two of the most common chemicals manufactured would be synthetic ammonia and carbon black. Other components of propane and heavier constituents are usually considered as wet fractions or gas and therefore I am going to limit this discussion to the use of the dry gas. Various means have been developed to achieve the required molecular rearrange-[fol. 295] ment,—as these results became evident the possibility of a synthetic organic chemical industry based upon the utilization of these reactions of heat, pressure and

catalyst became apparent both to the petroleum industry and the chemical industry and today this organic industry is large and growing rapidly in importance. During the war both groups of natural gas, that is, heavier fractions and the light fractions, were used extensively in the manufacture of chemicals, namely, aviation gasoline, synthetic rubber, carbon black, organic materials and synthetic ammonia. There are four basic methods of converting dry natural gas. These are, oxidation, nitration, decomposition and halogenation. I have here a chart prepared from the United States Bureau of Mines, Information Circular 7108, entitled products obtainable from natural gas hydrocarbons. This isn't a complete list but merely is offered to show in a general way some of the basic products which can be manufactured economically from dry natural gas. There is a multitude of chemicals which can be made, but this list shows the more organic chemicals and the basic methods used.

Q. We offer that in evidence.

[fol. 296] Mr. Rolston: To which we object.

Mr. Cullison: We won't know whether we want to object or not until we can read that, it is such fine print. We request the Commission to reserve the right to rule until we have had the opportunity to examine the exhibit properly.

Chairman Bond: The Commission reserves that right.

The Witness Continues: (M. L. Mayfield.)

A. Natural gas may be reformed into a basic chemical raw material by four classification of decomposition, nitration, halogenation and oxidation. In the decomposition of natural gas, three methods are presently being used or investigated. These methods are electrical, thermal and catalytic processes.

Mr. Cullison: I understand that this is a continuation of the answer that we have already objected to.

Chairman Bond: Yes. Go ahead.

A. Dry natural gas may be reformed into acetylene by electrical methods. It is reported that the Germans, using methane derived from coke oven gas, manufactured acetylene by electrical methods during World War Two.

Mr. Cullison: That is hearsay as far as he is concerned. He doesn't know what the Germans did unless he had it second handed.

Chairman Bond: This man is testifying as an expert, he can testify as to his studies.

[fol. 297] Mr. Cullison: It is hearsay evidence. He should give his authorities.

Chairman Bond: He is an expert and is giving expert testimony. Go ahead.

A. Well getting closer to home, at the University of Texas and under the direction of Dr. E. P. Schoch, a method was investigated and the economics studied thereof which determined that such a procedure is of both practical and economic significance. According to Dr. Schoch, in the University of Texas Publication Number 4503, and I quote, "The average weight of products made from acetylene is about twice as much as that of the acetylene itself with average price of the product 'plastic' at 40 cents per pound".

Mr. Cullison: We object to that testimony, if you please.

Chairman Bond: You may testify with what knowledge you have gained under your studies, and in Dr. Schoch studies, do not quote him, unless you are quoting from a textbook.

A. I have this reference.

Mr. Cullison: We object to any reference from anyone unless it is pert-ent, and he knows of his own knowledge.

Chairman Bond: On these subjects, we don't get anything unless we get it from the original philosophers, such as Plato and Aristotle, and others, and from textbooks.

[fol. 298] A. These studies have been going on under the direction of Dr. Schoch and have been supported by numerous gas companies in Texas and other parts of the country.

Chairman Bond: Go ahead.

A. Using gas at ten cents per MCF a forty fold increase in value may be achieved due to this manufacturing conversion. The thermal cracking of hydrocarbon gases by regenerative or tub-lar methods is now being rigorously investigated and tubular cracking of the heavier hydrocarbons is being practiced commercially today. The thermal method of cracking natural gas into its component parts, this is, carbon and hydrogen, is of great practical importance and today such procedures provide us with

enormous quantities of carbon black and by-product hydrogen which is of value as a chemical raw material. The catalytic decomposition of dry natural gas is now being investigated in pilot plant operations and may soon become of pra-tical importance in metallurgical operations. The nitration of natural gas components, such as methane, ethane and propane, in the vapor phase with nitric acid is an accomplished fact and these nitro derivatives, such as nitro-methane, may prove to be a foundation of an organic chemical industry which some day may rival the coal tar derivatives which originated in the first world war. The halogenation of natural gas may be defined as the introduction of any member of the halogen family such as chlorine, [fol. 299] bromine and iodine into the hydrocarbon molecule with the aid of catalyst, heat or photosyntheses, to obtain solvents, refrigerants and anaesthetics. Some of these products are methyl bromide, methyl chloride, chloroform and carbon tetrachloride.

Mr. Cullison: I observe the gentleman is reading the statement from the witness stand, I have no objection to his looking at the paper and refreshing his memory but I think that the statements should be independent of the paper and from memory. I do object to his reading.

Chairman Bond: Did you prepare that article?

A. Yes.

Chairman Bond: And that is your testimony in this case?

A. Yes sir.

Chairman Bond: If you prepared that article and that your testimony, and it is of a highly technical nature, you may use that article if you prepared it yourself.

A. I prepared it myself from my own studies.

Chairman Bond: Go ahead.

Mr. Cullison: He may have changed his mind.

Chairman Bond: You can ask him if he changed his mind since he prepared that article.

[fol. 300] Mr. Cullison: The general rule is that a witness may refresh his memory and consult his notes as he testifies.

Mr. Pruet: I believe the witness has stated that he is reading from something that has been prepared by himself.

Chairman Bond: The commission has overruled you. Mr. Mayfield, if you have testified to anything that you have

not prepared, you might retestify, but if you have prepared that article yourself, then the Commission wants to be shown some authorities. We will let him read his testimony into the record, he testified that he prepared it himself, from his own information.

Mr. Pruet: State whether or not you have read the paper or used it for notes, did you use it as you went along to refresh your memory?

A. I used it for notes.

Mr. Pruet: Have you read it verbatim?

A. No, that is right.

Mr. Pruet: Go ahead and state now in regard to the chemicals of dry gas.

A. I have generally outlined the basic principle involved and the chemical manufacturing.

[fol. 301] Mr. Pruet: Have you made a study of the actual or intrinsic value of dry natural gas as compared to the value of other sources of fuel on a basis of there value in BTU?

A. Yes sir.

Mr. Rolston: We object to the testimony as it is incompetent irrelevant and immaterial.

Chairman Bond: Overruled.

Mr. Rolston: Note our exceptions.

A. In the introduction of oxygen into the hydrocarbon molecule by controlled oxidation the heavier constituents of natural gas, like propane and butane, are a desirable raw material. However, in such procedures the oxy-hydrocarbon compound manufactured is and concentrating equipment is required. Recently, attention has been directed to the oxidation of dry natural gas in the presence of the catalyst for the manufacture of the lighter oxy-hydrocarbon derivatives in such a consentrated form that separation and concentration is not required. Such developments dicate that attention be directed to the oxidation of dry natural gas by controlled oxidation with use of a catalyst. Much publicity has been given to the use of both dry natural gas and the heavier fractions of natural gas as a basic chemical raw material, however the figures which support its value as a chemical raw material are closely guarded by the chemical industry. Fischer-Tropsch gas at ten cents will produce a barrel of gasoline at fifty-two cents,

[fol. 302] equivalent price of coal would be $1.54 per ton.

The convenience and utility of dry natural gas as a fuel is well recognized through the United States by everyone. On the matter of price there has been considerable said about the commensurate or intrinsic value of gas when used as a fuel. These qualitative and somewhat vague adjectives have meant that the industry, the State, and the producers are receiving for the energy and convenience, value of gas as a fuel a price far below parity with other fuels, such as coal or lignite. When great gas fields are discovered and they have been discovered up to the present time largely as an accidental occur-*ance* in the prospecting for oil, there is usually no nearby market with sufficient capacity to consume even a small proportion of the gas which might be produced properly and conservatively. Under such conditions the gas has little or no value. The elementary economic equation of supply and demand is unbalanced with an excessive supply and exceedingly small demand. The result has been that prices for gas are so low as to be in some cases almost a token price.

In terms of heating value, 6,000 cubic feet of gas are approximately equal to a barrel of oil. In further support of our contention that natural gas in the Hugoton Field is currently being purchased below parity prices, the follow-
[fol. 303] ing information has been prepared using Kansas City as a point about which to make calculations and cost comparisons for bituminous coal and fuel oil. These comparisons when reported as cents per pound of fuel and cents per therm, a therm representing 100,000 b. t. u., results are as follows, and I would like to refer to this table here.

Chairman Bond: Very well.

A. As I said, I have taken Kansas City as a point of this calculation to make a cost comparison of Bituminous coal.

Mr. Cullison: The witness appears to be reading again.

A. I am, I have the prices in a table here.

Mr. Cullison: We object to his reading.

Chairman Bond: Your objection overruled, and exceptions allowed.

A. I have taken the wholesale price of fuels from Kansas City. Coal, Bituminous coal at $4.50 per ton which is wholesale and fuel oil at $1.18 per barrel. I show in my table

BTU per pound, cents per pound, cents per therm and efficiency.

	BTU Per #	CTS Per #	CTS per Therm	Efficiency
Bituminous @ $4.50 per ton (wholesale)	12,500	.225	1.8	70%
Fuel Oil @ $1.18 per bb.	16,500	.385	2.34	74%

If the efficiency of conversion for the various types of fuels indicated are applied, the cost of a converted therm then becomes—and I read the following table:

[fol. 304]

	CTS Per Therm	Efficiency of Conversion	Cost of C Converted Therm	Price of Gas in Kansas City
Bituminous @ $4.50 per ton	1.8	70%	2.57	25¢
Fuel Oil @ $1.18 per bbl.	2.34	74%	3.15	31.5

This results that the minimum cost per converted therm is obtained when bituminous coal is used. Applying this minimum to natural gas operations using the recognized 85 per cent efficiency of conversion and apply to a volumetric basis, Hugoton Natural Gas then is worth in excess of 19 to 20 cents in Kansas City. Allowing nominal transportation costs under modern and efficient high pressure transmission lines, the intrinsic value of natural gas in the Hugoton Field is calculated to be well in excess of ten cents per thousand cubic feet.

It is obvious that natural gas as a fuel is superior and this is verified by the phenominal growth of consumption in the recent years. Based on heating value it is below parity for any type of fuel. It follows that the present wellhead price being paid in Hugoton is inconsistent with its intrinsic value. It is freely admitted by those interested in the natural gas industry, both the regulatory bodies and industry itself, that as the price of natural gas increases greater conservation will be achieved. Prise is the control.

Mr. Pruet: From your studies of the relative values of fuel, that is to say, as to dry natural gas as found in the [fol. 305] Guymon Hougton Field and other comparable fuels such as coal and fuel oil taken at that market values,

what is the actual intrinsic value of natural gas at the well-head in the Guymon Hougton Field, per thousand cubic feet as compared to the value of fuel oil and coal?

Mr. Cullison: If the court please, he is asking this gentleman, as I analize the question, to testify to the relative price of gas in terms of some thing other than money. He is asking him to tell how much a foot of gas is worth in terms of oil or coal at the well head in the Hugoton Field. There is no coal there, there is no oil there, it involves transportation of coal for an unknown distance.

A. Illinois coal.

Mr. Cullison: Northern or southern?

A. Generally.

Mr. Cullison: Well it hasn't been explained and I am going to object to it on the grounds that it doesn't tend to prove or disprove any issues in the case.

Mr. Pruet: I will withdraw the question.

Mr. Pruet: Do you have some further statement to make in connection with the exhibit?

A. Yes.

Mr. Pruet: Go ahead, you may proceed Mr. Mayfield.

[fol. 366] A. One of my reasons for saying that gas was worth ten cents in the Hugoton Field was——

Mr. Cullison: Just a moment, we want to object to that.

Chairman Bond: Let him qualify the witness.

Mr. Pruet: Do you have an opinion as to the intrinsic value of natural gas in the Guymon Hougton Field at the well head, based upon your studies based on its comparity value as to other fields?

A. Yes.

Mr. Pruet: You may tell what your opinion is as to such value as to gas at the well head in the Guymon Hougton Field?

Mr. Cullison: To which we object as it does not tend to prove or disapprove any issues in the case involving collateral. We will have to try the question of price of coal out there and the question of price of fuel oil out there, which they don't have, and it will involve the question of

freight rates and the wages of miners and drillers, all of those items are to be taken into consideration, when you go to talking about prices and values.

[fol. 307] (Continuation of argument upon last preceding objection.)

Chairman Bond: The Commission has never had before it a case of this character, where this character of testimony was offered and the Commission has no authorities on it but will admit the testimony and give you full opportunity to rebut it. You may prove the price or value of any material you want to,—you may have an exception.

(Further argument upon said objection.)

Chairman Bond: The Commission has no recollection of any case before it, where this question was involved, and there has been so much said in hearings before the Federal Power Commission upon these relative values, especially as to coal and fuel oil, and the Commission is going to let the higher courts pass on it. You will have full opportunity for rebuttal,—you will be allowed an exception.

Q. You have already answered my question as to whether or not you have an opinion as to the intrinsic or actual value of natural gas at the wellhead in the Guymon-Hugoton Field, based on its comparative value as compared with other classes of fuel, you have said that you have such an opinion,—now, what is that opinion as to the intrinsic or actual value of natural gas at the wellhead?

A. I think it's worth ten cents.

Q. Ten cents per what?

[fol. 308] A. Ten cents per thousand cubic feet.

Q. Now, counsel has referred to the fact that there is no coal up there, that it has to be transported in there,—have you made a comparison as to the heating value of natural gas as compared with crude oil?

Mr. Cullison: The same objection is urged.

Chairman Bond: The same ruling, and exceptions allowed. All questions along this line are considered objected to, the objection is overruled and exception allowed.

A. In a barrel of crude oil there are six million BTU,—based on the current price of crude oil and comparing the

heating value of crude oil and natural gas I would say five times the value,—in other words, if you put it on the equivalent of crude oil the gas is worth twenty cents.

Q. That's at the wellhead in the Guymon-Hugoton Field?

A. Yes, sir.

Q. That is based on natural gas and crude oil, in Oklahoma, at the wellhead,—for natural gas at the wellhead?

A. That's right.

Q. Are you familiar, in a general way, with the prices currently being paid, and have you heard statements in the record, by witnesses and by counsel, as to the current prices being paid in the Hugoton Field for natural gas at the well head?

A. Yes, I have.

[fol. 309] Judge Cullison: You mean at this period?

Mr. Pruet: Yes.

Q. Now, from the experience you have had as a natural gas engineer, from your knowledge and experience in connection with the production, transportation and distribution of natural gas,—from your knowledge of the natural gas industry, the development, production, transportation, transmission and distribution costs involved therein, do you have an opinion as to the cause of the present depressed price of natural gas in the Guymon-Hugoton Field?

Judge Cullison: We object to that as certainly not tending to prove any issue in this case.

Chairman Bond: We want to know the cause that exists there and if this witness can give us any information that will help the Commission in arriving at a just and fair——

By the Witness: I think I can give a satisfactory answer.

Q. Will you give that as an expert or a layman?

A. I can give it as an expert.

Chairman Bond: You may give it as an expert—exceptions are allowed counsel.

A. Well, in the early period of its production there natural gas was of little value, since it was just an incident to the search for oil, and they didn't have adequate market facilities. The price paid for it was little more than a token [fol. 310] price and in some instances it was even given away, in order to perpetuate the lease. In the course of develop-

ment major companies acquired large blocks of acreage and after the discovery of the gas they were forced to seek and secure markets and after the laying of transportation lines and development of the market it has been a very profitable arrangement, due to the large blocks closely held, and the companies were marketing their own gas—lease holders of smaller character and smaller owners, not having financial backing and resource were not even given the opportunity to market their gas,—as a result the price was depressed and has remained depressed throughout the gas industry.

Q. From your experience and studies and from your knowledge of the gas industry do you have an opinion as to whether or not the price of natural gas at the well head has any relationship to or bearing upon the conservation of natural gas as a natural resource?

Judge Cullison: We make the same objection.

Chairman Bond: The same ruling and exceptions allowed. You may answer.

A. Yes, sir.

Q. State whether or not in your opinion a higher price for natural gas at the wellhead is conducive to and will result in the conservation of natural gas as a resource?

Judge Cullison: We object to that for the same reasons heretofore stated and in addition thereto for the reason that it is leading and suggestive.

[fol. 311] Chairman Bond: The objection is overruled,—exceptions allowed.

A. Well, I think it is fundamental that as things become more valuable there is more and greater effort to conserve them, and certainly if gas prices are higher then there will be greater conservation of gas, either by elimination of waste or through greater money returns to the State of Oklahoma.

Q. You have heard stated here in the record, by various witnesses, and some statements of counsel and you have heard them read from various contracts various prices of oil,—various prices at which natural gas has been sold and is being sold at the well head in the Guymon-Hugoton Field. From your knowledge and from what you have heard in the trial of this case, from your knowledge of the natural gas industry, particularly the production, transmission and dis-

tribution of it, do you have an opinion as to whether or not the production of natural gas in the Hugoton Field, to be taken out of that Field at those prices, do you have an opinion as to whether or not that constitutes economic waste?

Judge Cullison: To which we object for the reasons stated.
Chairman Bond: Overruled,—exceptions allowed.

A. Yes, I have an opinion.
Q. State in the record what that opinion is.
A. I would say that would constitute economic waste. At [fol. 312] the price stated by Judge Cullison a while ago, I would say that the sale of natural gas at the price he mentioned would be economic waste.
Q. Well, even at four or five cents, what would you say?
A. I think it is below parity, below the other values, therefore the price of gas should be higher.

Counsel for Defense: We make the same objection.
Chairman Bond: The same ruling,—exceptions allowed.

Q. State whether or not the sale of and taking out of the Hugoton Field in Texas County, Oklahoma, the Guymon-Hugoton Field, of gas at a price between four and five cents at the wellhead, is economic waste? In your opinion would the sale and the taking of gas out of that Field, at that price at the wellhead, constitute economic waste?
A. Yes.
Q. Are you familiar with the pressure basis of measurement which is employed in purchase contracts in the Hugoton Field, in the Guymon-Hugoton Field, that is to say, two pounds above 14.4?
A. Yes, I saw one contract where that pressure basis was used.

Q. Do you know what the atmospheric pressure in the Guymon-Hugoton Field is?
A. Yes, sir.
Q. What is it?
A. 13.2.
Q. 13.2? Answer: Yes, sir.
[fol. 313] Q. Now, in the Mid-Continent areas of Oklahoma, Kansas and Missouri,—do you know about what the average atmospheric pressure is in those regions?
A. Yes, sir, it will run between,—oh, about 14.4,—14.4.
Q. State whether or not that's the atmospheric pressure

in the areas in the cities where this Gas Company sells its gas?

A. Well, I believe so. I don't know whether that's right or——

Q. Go ahead.

A. I don't know for certain whether—I think it is 14.4, however they market it at Kansas City at 14.4 plus 8 ounces.

Q. What is the reason for the addition of the 8 ounces to the 14.4, which is the atmospheric pressure?

A. Well,——

Judge Cullison: Did you ask the witness what is our purpose in adding that eight ounces? If so, we object, as not tending to prove any issue in this case, and for the other reasons stated in the previous objection,—and, as an added one, this phase of the matter is not included in the notice, as I recall it that is, neither in the legislative nor the judicial hearing.

Mr. Pruet: We have asked that it be fixed at atmospheric pressure rather than at atmospheric pressure plus two pounds. That's part of—we asked the Commission to fix the price, both as between Peerless and the Cities Service, and in the Field at large if this order is entered. The notice says "Measurements and Prices."

[fol. 314] Cha-rman Bond: Overruled.

Judge Cullison: Exception.

Chairman Bond: Exception allowed.

A. It is the usual practice for various gas companies to deliver gas through the meter at some low pressure and these pressure bases may be 14.4 or 14.65 or it may be 14.4 plus eight ounces.

Q. What is the difference, on a percentage basis, between the amount of gas that is obtained on the basis of atmospheric pressure, and the pressure basis of 14.4 plus 2 pounds.

A. It makes a difference of approximately 11%.

Q. Eleven percent,—then by using the pressure basis of 14.4 plus two pounds for the purpose of measuring gas the producing company receives more, or less, which?

A. They receive more gas by purchasing at the higher pressure basis.

[fol. 315] Mr. Pruet:

Q. And the difference between the two, 14.4, which is the average atmospheric pressure in which the Cities Serv-

ice Company sells its gas in the area in which it sells it, and 14.4 plus two pounds, is how much, on a percentage basis of gas.

A. Approximately 10.8.

Q. From your study of the natural gas industry as you detailed it here on the witness s-and—strike that question—do you know how that basis of measurement, that is to say, two pounds above atmospheric pressure, why that came into use?

A. Yes, it is a carry over from the *eraly* day technique of transmitting gas when it was a customary practice and also actual experience that the lines had considerable leakage, there was quite a bit of gas lost and it was an incremental amount of gas and the transmission gas companies offset this loss in transmission. However, in modern day techniques——

Judge Cullison: We object, he asked him how it arose and he answered it.

Chairman Bond: Very well.

Mr. Pruet:

Q. Under the proper present practices and methods of operations is there any such loss by way of leakage or should there be?

A. It has been reduced considerable.

Q. In your opinion is such a basis of measurement any [fol. 316] longer necessary to compensate, if it was necessary, natural gas companies by way of leakage?

Judge Cullison: Same objection. I would state that this element does not occur in the notice that I read.

Chairman Bond: Overruled. Exception allowed.

A. No, I think it is an antiquated practice. I think it would be much more desirable to get it on an atmospheric basis of 14.73.

Mr. Pruet:

Q. Do you know what is the accepted basis of measurement by the Bureau of Mines.

Judge Cullison: Same objection. I understand the Bureau of Mines, as such, is not any considerable purchaser or seller of gas. As to what their habit of mathematical computation

for handling quantities and substances, in their computation, to keep up with the different practices of the industries, doesn't have a thing to do with commercial transactions, in the substances concerning which they have such standards. For these reasons we object to any recommendations about the pressure base that Your Honors may order in this field or any other field, because it has no bearing on the issues in this case and is not included in the notice.

Chairman Bond: The Commission is of the opinion that it can be considered as evidence in the case. The weight that may be given to it is another question. The Commis- [fols. 317-318] sion in promulgating many of its rules and regulations, especially some in the Hugoton field, have found very useful and beneficial rules and regulations we obtained from the Bureau of Mines. Every month in market demand we use the recommendations from the Bureau of Mines. It is only part of the testimony and it is only a question to be considered by the Commission as to what weight we may give it. Exceptions allowed.

Judge Cullison: Are you applying it to both phases or just the legislative phase of this hearing?

Chairman Bond: Well, we are receiving it for what it is worth. It is now time to recess.

[fol. 319] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—Filed May 9, 1946

This cause came on for hearing before the Corporation Commission of Oklahoma in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 6th day of May, 1946, the Hon. Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Wm. J. Armstrong, Commissioners, sitting. Earl Pruet, Attorney of Oklahoma City, appeared for the applicant, Peerless Oil & Gas Company, a corporation and R. E. Cullison, Attorney of Oklahoma City and Joe Ralston, Jr., Attorney of Oklahoma City, appeared for the respondent, Cities Service Gas Company, a Corporation. Floyd Green, Conservation Attorney, appeared for the Commission.

The oral arguments as to the legal questions involved were heard and testimony was taken on May 6, 7 and 8th, after which it was agreed that the cause might be continued until July 9th, 10th, 11th and 12th, 1946.

Order

It is therefore ordered that this cause be and the same is hereby continued to July 9th, 10, 11 and 12th, 1946, and to be further heard in the Commission'd Court Room, Capi- [fols. 320-321] tol Office Building, Oklahoma City, Oklahoma.

Done and performed this the 8th day of May, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 322] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Application for Leave to Intervene—Filed June 19, 1946

The State of Oklahoma on relation of the Commissioners of the Land Office hereby applies to the Corporation Commission for permission to intervene as a party plaintiff in the above captioned cause of action and as a basis for this application intervener alleges and states:

A. That intervener owns in trust 49,600 acres of what is known as School Land in Texas County, Oklahoma, all of which is p-tentially gas lands, and a great portion of which is now actually producing gas.

B. That on the 27th day of May, 1946, the Commissioners of the Land Office in a legal session took action authorizing the Secretary to intervene in said action, a certified copy of said action is hereto attached, marked "Intervener's Exhibit 1" and made a part hereof.

C. That the subject matter of this action, and that portion pertaining to the field price and measurement of gas is a matter of public interest, and of vital interest to the State at large and its people; that there is no uniform field measurement and no fair or adequate fixed value, rate, or [fol. 323] price in the field; that by reason thereof the Corporation Commission of the State of Oklahoma has jurisdiction and authority to determine and fix the price to be paid and the terms and conditions of the taking of natural gas from all wells, and by reason thereof said Commission also has jurisdiction and authority to fix and should fix the price to be paid for natural gas throughout the Hugoton-Guymon, Oklahoma, gas field by all purchasers of natural gas therein.

D. That the price paid to this intervener in said Guymon Gas Field is at various sums of 3½ cents, 4 cents, and 5 cents, respectively, per m.c.f. and that such discriminitory prices are unfair, unjust and arbitrary, and should not be permitted; that the said Guymon Gas Field is being, and will be depleted, destroyed, and exhausted, within a few years at a fraction of its actual value if there is not a fair, adequate, and uniform price established by legal authority before it is taken from the wells.

Wherefore, this intervener asks permission of this honorable body to intervene and to file its Petition in Intervention in this cause.

Respectfully, The State of Oklahoma on Relation of the Commission-rs of the Land Office of said State, Walter Marlin, W. D. McBee.

[fol. 324] "Intervener's Exhibit 1"

Meeting of the Commissioners of the Land Office of the State of Oklahoma, Held in the Office of the Secretary at Oklahoma City, Oklahoma, Monday, May 20, 1946, at 10:30 a. m.

Present: Hon. Robt. S. Kerr, Governor and Chairman; Hon. Joe C. Scott, Pres. State Board of Agriculture; Hon. A. L. Crable, State Supt. of Public Instruction; Hon. Frank Carter, Secretary of State.

Absent: Hon. C. C. Childers, State Auditor.

Among other things, the following proceeding was had:

The Secretary called to the attention of the Commission the petition of Peerless Oil & Gas Company now pending before the Corporation Commission, Cause No. 1054, Peerless Oil & Gas Company vs. Cities Service Gas Company, for increase in gas rates in the Guymon Gas Field, to 10¢ per thousand cubic feet of natural gas, measured at 10 oz. above atmospheric pressure. The petition states that the present practice of measuring gas at two pounds above atmospheric pressure results in a loss to the producers and the royalty owners to the extent of ten per cent or more of the natural gas purchased, and we have been asked to intervene in support of the petition for price increase. The matter is discussed, and it was moved by Governor Kerr and seconded by Mr. Carter that the Secretary be authorized to intervene in the Case and support the application for increasing the floor to at least an average of 6¢ and not to exceed 10¢.

All vote aye: Motion prevailed.

I, Walter Marlin, the duly appointed and qualified and [fols. 325-326] acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above is a true and correct record of proceedings had before the Commissioners of the Land Office of the State of Oklahoma on the 20th day of May, 1946, and is a part of the minutes of said meeting.

Witness my hand this 3rd day of June, 1946.

Walter Marlin, Secretary to the Commissioners of the Land Office of the State of Oklahoma. (Seal.)

[File endorsement omitted.]

[fol. 327] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Order Allowing Intervention—Filed June 25, 1946

Now on this the 19th day of June, 1946, the Corporation Commission being in executive session, the application to

intervene filed herein on this date by the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, comes on for consideration.

It appears that the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma is a substantial owner of oil and gas producing properties located in the Guymon-Hugoton Field in Texas County, Oklahoma, and that they have an interest in the outcome of this proceeding.

The Commission is therefore of the opinion that the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma should be allowed to intervene and participate in the proceedings.

Order

It is therefore ordered that the application to intervene filed herein by the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, be granted, and the applicant be permitted to participate in [fols. 328-329] the proceedings.

It is further ordered that notice of the application and the hearing thereof be given as required by law.

Done and performed this 19th day of June, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioners.

Attest: Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 330] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Petition in Intervention—Filed June 19, 1946

Comes now the State of Oklahoma on relation of the Commissioners of the Land Office, and by permission of the Corporation Commission, files this Petition in Intervention and for its cause of action and its claims, demands and requirements herein, alleges and states:

A. That Intervenor refers to the allegations in its Application to Intervene, and makes the same a part hereof, and adopts all of the applicable portions and allegations set forth in the petition of the Applicant in this cause, Peerless Oil and Gas Co.; that Intervener owns in trust 49,600 acres of school lands in Texas County, Oklahoma, and over 300,000 acres of such lands in the two adjoining Counties of Beaver and Cimarron, and it is interested in this cause as a common question of law and fact, and has interest direct and not remote;

B. Intervener alleges that at the time original gas wells were drilled in Texas County, Oklahoma, there was only a [fol. 331] very limited market; that with such limited market and with only a very few persons, firms, or corporations, interested therein arbitrary and monopolistic prices and measurements for such gas were put into practice by the producers and purchasers; that this intervener and hundred of others similarly interested, although holders and owners of vast landed interests, were never consulted nor notified of any hearing on price or measurement of such gas; that said action in measuring and fixing a price at that time was due — the fact that said gas was a distress commodity; that no important demand was expected at that time because of the limited supply, but that since a vast volume and supply of gas has been discovered and developed, a nation-wide market of exigent and exacting demand has developed, calling for drastic action to preserve this important and valuable natural common reservoir of the world's finest fuel from complete exhaustion and depletion at a small fraction of its intrinsic value. Intervener further states that the numerous uses such as lighting, heating, power and the many scientific employments and uses, the subdivision and separation into its many component parts, both liquid and gaseous, make this gas a very valuable commodity; that it is irreplaceable, and therefore should not be dissipated and exhausted at a fraction of its actual worth, which, in effect, *is wanton economic waste*.

C. Intervener alleges and states that the Secretary of the Interior of the United States, on July 1, 1926, promul- [fol. 332] gated a rule for the measurement of natural gas as follows:

"All gas subject to royalty shall be measured by meters (preferably of the orific meter type), approved by the supervisor or his representative and installed at the expense of the lessee at such places as may be agreed to by the supervisor or his representative. The standard of pressure in all measurements of gas sold or subject to royalty shall be 10 ounces above atmospheric pressure of 14.4 pounds per square inch, regardless of the atmospheric pressure at the point of measurement, and the standard of temperature shall be 60 degrees Fahrenheit. All measurements of gas shall be reduced by computation to these standards, no matter what have been the pressure and temperature at which the gas was actually measured."

Intervener states that the States of Wyoming, Louisiana and Oklahoma, and many other states have adopted the rules of the Interior Department, and that the above measurements of gas is actually now in effect in this state; that all Departments of this state should use the same weights and measurements of its commodities, so that same would be uniform and in harmony.

Intervener states that the so called price of gas at the mouth of the well does not apply to intervenor, and does not appear in its lease contract; that such term is a myth and a fiction; that there is no market at the well; (Gorton v. United Gas Public Service Co., 84 Fed. (2) 436, Cumberland Pipe Line Co. v. Commonwealth, 15 S. W. 2 280, Cimarron Gas Utilities Co. vs. Safranko, 187 Okla. 86, 101 P. 2 [fols. 333-334] 258) that from the time of Colonel Drake's well until very recently *all* lease contracts provided that the royalty of oil and gas was to be delivered in the tanks or pipe lines *free of cost to lessor;* that only "trick" leases of recent origin contain a mouth of the well provision.

Wherefore, premises considered, this Intervener prays that all interested parties be properly notified; that this Petition be properly docketed and set for hearing, and that after hearing and investigation, this Commission prescribe and order that owing to the exigencies of the times, and the changed conditions of the demands, that the Commission is warranted in fixing, and does fix a fair rate and value of 10 cents per one thousand cubic feet of natural gas in the Guymon, Oklahoma, Gas Field; that said price is in

keeping and in harmony with its actual and intrinsic worth and value; that said rate and price be fixed as "in the sands and in the common reservoir before being removed", in order to circumvent wanton economic waste; that the measurement of said gas be in conformity with the measurement now in effect in the School Land Department as is provided by the Departmental Schedule, and for such further order and relief as this Commission may deem proper.

The State of Oklahoma on relation of the Commissioners of the Land Office, by Walter Marlin, W. D. McBee, Its Attorneys.

[File endorsement omitted.]

[fol. 335] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF HEARING—June 19, 1946

To Cabon Carbon Company, Pampa, Texas; Southwestern Public Service Company, Guymon, Oklahoma; Republic Natural Gas Company, Dallas, Texas; Cities Service Gas Company, First National Building, Oklahoma City; Phillips Petroleum Company, Bartlesville, Oklahoma; Panhandle Eastern Pipe Line Company, 1221 Baltimore, Kansas City, Missouri; and to all other Operators, Purchasers and Takers of Gas in Oklahoma and particularly in Guymon-Hugoton Field in Texas County, Oklahoma:

Notice is hereby given that the Corporation Commission of Oklahoma will hold a hearing on the 9th day of July, 1946, at 10 o'clock, a.m., upon the petition in intervention filed herein by the State of Oklahoma on relation of the Commissioners of the Land Office of the State of Oklahoma, said hearing to be held in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma.

Notice is further given that the petition in intervention requests that the Commission fix a fair rate and value of 10¢ per one thousand cubic feet of natural gas in the Guy-
[fols. 336-337] mon-Oklahoma Gas Field; that said price is in keeping and in harmony with its actual and intrinsic worth and value; that said rate and price be fixed as "in the

sands and in the common reservoir before being removed" in order to circumvent wanton economic waste; that the measurement of gas be in conformity with the measurement now in effect in the School Land Department, as is provided by the Departmental Schedule; and for such further order and relief as the Corporation Commission may deem proper.

All persons interested in such matter may appear on said date and be heard.

Done and performed this 19th day of June, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest:
Tom McMurray, Secretary. (Seal.)

[fols. 338-339] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER SETTING CAUSE FOR HEARING—Filed June 25, 1946

Now, on this the 19th day of June, 1946, the Corporation Commission of Oklahoma being in executive session, there comes on for consideration the above styled and numbered application.

It appears that this is a matter that should be set for hearing as soon as possible and that July 9th, 1946 is the first available date on the calendar.

ORDER

It is therefore ordered that this cause be and the same is hereby set for hearing in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 9th day of July, 1946, at 10 o'clock, a.m., and that notice thereof be published as required by law.

Done and performed this the 19th day of June, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman, Wm. J. Armstrong, Commissioner.

Attest:
Tom McMurray, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 340] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF HEARING—Filed June 25, 1946

To all Operators, Purchasers and Takers of Gas in Oklahoma and particularly in Guymon-Hugoton Field in Texas County, Oklahoma:

Notice is hereby given that the Corporation Commission of Oklahoma will hold a hearing on the 9th day of July, 1946, at 10 o'clock, a.m., upon the petition in Intervention filed herein by the State of Oklahoma on relation of the Commissioners of the Land Office of the State of Oklahoma, said hearing to be held in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma.

Notice is further given that the petition in intervention requests that the Commission fix a fair rate and value of 10¢ per one thousand cubic feet of natural gas in the Guymon-Oklahoma Gas Field; that said price is in keeping and in harmony with its actual and intrinsic worth and value; that said rate and price be fixed as "in the sands and in the common reservoir before being removed" in order to circumvent wanton economic waste; that the measurement of said gas be in conformity with the measurement now in effect in the School Land Department, as is [fols. 341-342] provided by the Departmental Schedule; and for such order and relief as the Corporation Commission may deem proper.

All persons interested in such matter may appear on said date and be heard.

Done and performed this 19th day of June, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest:
Tom McMurray, Secretary. (Seal.)

[fol. 343] (Affidavit of mailing of notice of hearing omitted in printing.)

[fol. 344] BEFORE THE OKLAHOMA CORPORATION COMMISSION, STATE OF OKLAHOMA

Reporter's Transcript of Hearing

Now on this the 9th day of July, 1946, A.D. persuant to adjournment of May 8th, 1946, A.D. further hearing of this case C.D. 1054, Peerless Oil and Gas Company, a corporation, Applicant vs. Cities Service Gas Company, a corporation, Respondent, was had, all previous appearance being made with the Commissioners of the School Land Department, State of Oklahoma also appearing by their attorneys, Walter Marlin and W. D. McBee; That the Commissioners of the Land Office having since the previous hearing, filed their Petition of Intervention, herein. The Oklahoma Corporation Commission being in session, the following proceedings were had:

[fol. 345] BEFORE THE OKLAHOMA CORPORATION COMMISSION, STATE OF OKLAHOMA

Chairman Bond: Gentlemen we have before us this morning, Peerless Oil and Gas Company, a Corporation, Applicant, vs. Cities Service Gas Company, a Corporation, Respondent. Are you ready to proceed?

Earl Pruet: The Applicant is ready.

Mr. Cullison: The Respondent is ready.

OFFERS IN EVIDENCE

Floyd Green: I would like to offer some formal exhibits. Exhibits 34, is a copy of the order issued by the Commission on the 8th day of May, 1946, continuing this cause to this date.

Mr. Cullison: That doesn't prove anything other than just to show that they were filed?

Mr. Green: It's introduced for the purpose of completing the record so if a transcript is prepared the record will be complete in this case, that's been the practice here for the last six years since I have been here with the Commission.

Mr. Cullison: It is not to prove anything other than the orders were filed?

Mr. Green: It is to prove that this cause was continued to this date.

Exhibit 35 is a copy of the Application to Intervene on behalf of the State of Oklahoma, when the School Land Commission filed their Application for Intervention in this cas- it was filed with the Secretary of the Corporation Commission on the 19th day of June, 1946.

Mr. Cullison: We want to object because a copy of that was not served on the respondent. We have had no notice of that.

Mr. Green: Exhibit 36 is a copy of the order issued by the Corporation Commission on the 19th day of June, 1946 [fol. 346] allowing the State of Oklahoma to Intervene in this matter.

Mr. Cullison: We object to that for the reason that we had no notice. Do you mean that they were allowed to intervene Ex-Parte, I understand that we were to take that up here this morning. You are prejudging the question of the right to intervene here either in the Legislative phase of this proceeding and the Judicial phase.

Mr. Ralston: As I read that order made by the Commission, the Petition of Intervention, a copy of which we received and which they first filed—they filed a petition for permission to file a Petition to Intervene. As I understand it, you gave them the right to ask permission to intervene and that will be heard here this morning at 10:00 o'clock, whether they will have the right to intervene or not.

Mr. Green: The Application and intervention petition were both filed and pursuant to that filing, I dictated an order allowing them to Intervene, which the Commission signed and I offered that order to evidence to keep the records straight here.

Mr. Cullison: Ar-n't we going to consider the matter of the Intervention?

Mr. Green: Let me finish my offer here. I want to offer Exhibit 37, the Petition in Intervention, filed June 19, 1946, by the State of Oklahoma, through the School Land Commission.

Mr. Ralston: We object to that for the same reasons, if this is a petition to be filed and an order entered.

Mr. Green: This is to keep the records straight in event of an appeal. Let me offer Exhibit 38, which is an Affidavit of Mailing, which has attached to it a copy of Notice of [fol. 347] Hearing issued by the Corporation Commission of Oklahoma on the 19th of June, 1946, which speaks for itself.

Mr. Rolston: If the Commission please, we want a ruling on the previous Exhibit, Exhibit 37.

Chairman Bond: Objections noted, proceed.

Mr. Green: Exhibit 39, is a copy of the Affidavit of Publication which is attached to Exhibit 38. I now offer Exhibits 34 to 39 inclusive.

Chairman Bond: What Notice was given, Mr. Green, of the filing of the Petition of Intervention?

Mr. Green: The Commission issued a Notice on June 19th, 1946; Addressed to: Cabot-Carbon Co.—Pampa, Texas. Southwestern Public Service Co.—Guymon, Oklahoma. Republic Natural Gas Co.—Dallas, Texas. Cities Service Gas Co.—First National Building, Oklahoma City, Oklahoma. Phillips Petroleum Co.—Bartlesville, Oklahoma. Panhandle Eastern Pipe Line Co.—1221 Baltimore, Kansas City, Missouri and each of these were mailed on the 26th day of June, 1946.

Chairman Bond: Was this notice mailed to the Cities Service Gas Company?

Mr. Green: Yes sir.

Mr. Cullison: The Notice says that a Hearing is to be had on the 9th day of July, 1946, on the Petition of Intervention.

Chairman Bond: The Commission will receive the Petition of Interventio. together with all other Exhibits, of-
[fol. 348] fered, the Commission will note objections and the Commission will allow exceptions and the Commission will permit Counsel to argue the question, and if the Commission finds that any petition of any kind, or character has been admitted here without authority of law or procedure then the Commission will then rule on the issues involved. You may proceed Judge Cullison to argue the matter and show your authorities. If you desire to file a Notice to Strike, you may do so. If you desire to file a Notice and Pleading as to the Commission's authority, we will permit you to file anything you desire, as long as you can show your authorities. Proceed gentlemen with your argument.

Note: Whereupon oral argument was had off the record.

MOTION TO STRIKE

Mr. Ralston: We move to strike the Petition of Intervention filed by the Commissioners of the Land Office, for-

the reasons and upon the ground that it is incompetent, irrelevant and immaterial, and it does not tend to prove or disapprove any issues in the case; That it shows upon its face that the Commissioners of the Land Office have no interest in a private dispute between the Peerless Oil and Gas Company, the Lessee and the Respondent, Cities Service Company, in this case, a pipe line company engaged in the production and transportation of gas in Interstate Commerce for resale. We are alleging further, and object- [fol. 349] ing to the allowance of the Petition of Intervention on the ground that it is prejudicing our rights as far as the Judicial dispute between Peerless Oil and Gas Company and the Respondent is concerned. We made the same objection to the Royalty Owners and we are making this objection to the State of Oklahoma, through the Land Commissioners Office. This is a Judicial Hearing which is a dispute between Peerless and the Respondent to fix the price. We are not accorded due process of law. The record of this case is going to be cumbersom- and large. The commission has not ruled on the separation in this case and we moved at the inception of this Hearing—that this case be separate and distinct and for the further reasons as set forth in our answer; And the further reason, that there isn't statutory provision allowing Commission in Oklahoma to fix the price in the Hugoton Pool or any other pool, we say that the Petition of Intervention should be stricken and the Application of the State of Oklahoma, through the Commissioners of the Land Office, should be denied.

Note: Whereupon oral argument was had off the record on the above Motion to strike.

Mr. Ralston: We further move that the Petition of Intervention filed herein be stricken for the further reason that the Petition shows on its face that it was not filed in compliance with the statutes of the State of Oklahoma, in a proceedure of this character; Under the rules of the Commission, any applicant filing in this case or cases of like character must set out the statute or Order of the Commission upon which the Application is based and they hav-n't complied with that and we move that this Petifion of Intervention be dismissed for that reason.

Note: Whereupon further oral argument was had off the record.

[fol. 350] (Further argument upon Motion to Strike Petition in Intervention)

Chairman Bond: The Commission will overrule your Motion to strike, and give you exceptions.

Mr. Rolston: As to all matters?

Chairman Bond: As to all matters.

Mr. Rolston: We move the Commission, now, for a continuance of this hearing, in order to prepare an answer to the Petition in Intervention, which Answer we desire to file to the Petition in Intervention filed by the State School Land Commission in this case.

Chairman Bond: Can you file your answer when we adjourn this afternoon?

Judge Cullison: The issues ought to be joined, if the Commission is to hear it.

Mr. Pruett: If the Commission please, when the matter is set down that's the time they should have their answer on file and go to trial.

Chairman Bond: The Commission desires to give everybody an opportunity to be heard and give everybody sufficient time for the presentation of any law or testimony they may have. The commission doesn't see any particular reason for delay here. You have not pleaded surprise and you haven't shown that it will take any additional time. Counsel representing the School Land Department will have to offer his testimony and then if you are surprised by [fol. 351] his testimony and if you can't meet his testimony and time is necessary you may make your record then, but it seems rather far-fetched for you to make,—to ask for a continuance at this time.

Judge Cullison: The point is that a new issue has been injected and that issue will not be joined without an answer filed,—I don't know whether our Answer to Peerless can be—whether it will suffice as an Answer to the *Petion* in Intervention also, but certainly the issues ought to be joined.

Mr. Pruet: I might say this,—Mr. Marlin says he has only two witnesses and his testimony will be very short and he would like to put it on now in order to enable him to meet another appointment, a sale, this afternoon.

Chairman Bond: The Commission will hear his testimony now and will see that your rights are not prejudiced, Judge Cullison.

Judge Cullison: Well, I think that may be all right—to join the issue at the time they introduce their evidence, with the understanding that we're going to join issue.

Chairman Bond: You are entitled to join issue and the Commission will not work any hardship on you. The testimony of the School Land Commission may be offered at this time and exceptions are allowed, Judge.

Counsel for Commissioners of the Land Office: If the Commission please, I will not read the Petition in Inter- [fol. 352] vention at this time. It simply alleges that the School Land Commission of the State of Oklahoma is the owner of considerable acreage in that area, that we have a number of gas wells within the area, that the price is too low,—and we also object to the method of measuring gas,—I believe that's all there is in the petition.

Mr. Rolston: Before the introduction of any evidence, we move for judgment upon the opening statement, and that the petition be dismissed.

Chairman Bond: Overruled. Exceptions are allowed.

The Intervenor then offered testimony, as follows:

[fol. 353] Ross Pierce, called as a witness for Intervenor, being first duly sworn to testify the truth, the whole truth and nothing but the trust, testified as follows:

Direct examination.

By Mr. Marlin:

Q. State your name to the Commission.

A. Ross Pierce.

Q. What is your employment, if any, with the School Land Commission of the State of Oklahoma?

A. I am head of the Oil and Gas Division of the Commissioners of the Land Office.

Q. As such division head do you have in your immediate custody and under your control the records of your department, insofar as they pertain to the oil and gas properties of the Commission?

A. I do.

Q. From those records are you able to state to this Commission the amount of land owned by the School Land Commission at this time, in Texas County, Oklahoma?

A. Yes, sir.

Q. You may state the acreage.

A. 49,600 acres in Texas County owned by the Commissioners of the Land Office.

Q. Are you able to state the number of acres owned by the Commission, in Texas County, Oklahoma, under oil and gas lease?

A. Yes, sir.

Q. You may state that acreage.

A. 30,160.

[fol. 354] Q. Can you tell the number of acres producing gas at this time?

A. 6099.92.

Q. I will ask you further, if our records under your control reflect the prices that have been offered and paid for gas in the Guymon-Hugoton Field and that are being paid and offered at this time?

Judge Cullison: Just a moment,—we object to the prices being "offered", unless it is made more definite, for the reason that it tends to prove no issue in this case. We have no objection to what is being paid.

Mr. Marlin: All right,——

Q. Are you familiar with the prices being paid at this time?

A. Yes, I am.

Q. State to the Commission what prices are being paid.

A. Four and five cents.

Q. Per thousand cubic feet?

A. That's per thousand cubic feet.

Q. And are you able to state from the records and files in your department other prices that have been offered the Commission for gas in Texas County, which prices have not been accepted nor agreed upon?

Vice-Chairman Weems: At a higher rate?

Mr. Marlin: No, its a lower rate.

Mr. Rolston: May we have a ruling that all of this testi-[fol. 355] mony in going into this record over our objection?

Chairman Bond: Yes, the record may so show.

Mr. Marlin: Our records reflect that we have been tendered contracts which contain prices lower than prices which have been paid in the Field, which prices and contracts the Commissioners of the Land Office have refused

to accept and to execute, and I simply asked the witness if he would state the prices in those contracts we have been offered and refused to execute. He stated we were being paid four and five cents,—we have been offered different prices.

Chairman Bond: You may offer the testimony but I doubt very seriously that it will be of any benefit to you or the Commission either to show that you have refused a lower price.

Mr. Rolston: Exception to that ruling.

Chairman Bond: Exceptions allowed.

Q. You are familiar with the contracts that have been tendered the Commission by Phillips Petroleum Company, who have drilled some gas wells in the Guymon-Hugoton sector?

A. Yes, sir.

Q. Those contracts have specified prices for gas?

A. That's right.

[fol. 356] Q. What is the price that was tendered?

A. .0334 cents per thousand per cubic feet.

Q. As a result, we have not been paid on these wells at all for our gas?

A. That is right.

Chairman Bond: Is this offered for the purpose of showing that you have refused a lower price or for a discrimination?

Walter Marlin: A discrimination.

Mr. Cullison: I wonder if they are objecting for not being paid the field price?

Walter Marlin: No sir, we want higher than the field price, if there is any field price.

Floyd Green examines the witness:

Q. You are being paid on the basis of royalty on the gas, is that right?

A. That is right.

Q. That is based on four and five cents at the wellhead?

A. That is right.

Walter Marlin: I believe that we have a different kind of a contract.

Floyd Green: I didn't go into that, I want the difference between the royalty owner and producer.

Walter Marlin: Our contracts do not call for payment at the wellhead but delivery in the line.

Chairman Bond: You may proceed.

Mr. Cullison: He hasn't proven that those contracts call for delivery in the line but its a new feature.

[fol. 357] Walter Marlin: We will be glad to furnish a copy of our lease form with that provision.

Mr. Cullison: We would like to see it.

Chairman Bond: Will you furnish that to Counsel?

Walter Marlin: Yes, sir.

Floyd Green: Is this uniform as far as the School Land Commission is concerned?

Walter Marlin: Yes it is.

Mr. Cullison: Could we see it before Cross-Examination of this witness?

Walter Marlin: I can send someone over to the office after a copy.

(It was agreed that the witness may be excused and continue with the hearing—while the copy of the requested "Lease Form" was being produced by the School Land Commission:)

Witness excused temporarily.

[fol. 358] Whereupon W. D. McBee, of Lawful age, being first duly sworn, testified as follows, to-wit:

Witness examined by Walter Marlin (Atty. for School Land Commission).

Q. State your name to the Commission.
A. W. D. McBee.
Q. Where do you live?
A. Oklahoma City.
Q. What is your employment or business connection?
A. I work for the Commissioners of the Land Office.
Q. In what Capacity?
A. Attorney for the Oil and Gas Division.
Q. Have you been there some time?
A. More than three years.
Q. You are not qualifying as an expert, but have you had some experience as an individual in Oil and Gas in this State?

A. Yes sir.

Q. How long have you been a producer of oil and gas?

A. I have been in the production of oil and gas for eight or ten years in all.

Q. That was before you came to the School Land Commission?

A. Yes sir.

Q. You are not engaged in the production of oil and gas at this time?

A. No sir.

Q. Were you requested to make an investigation into the price of coal produced in this state recently?

[fol. 359] A. Yes sir.

Q. Tell the Commission what day you started to make this investigation.

A. The day was July 5th, 1946 that I started the investigation.

Q. Where did you first go?

A. Lehigh.

Q. Lehigh, Oklahoma.

A. Yes sir.

Q. Is that in the coal producing area?

A. Yes sir.

Q. At Lehigh were you permitted to make an investigation of the price of coal in that area?

A. Yes.

Q. Did you do so?

A. Yes sir.

Q. As a result of that investigation what did you find as to the price of coal at Lehigh?

Mr. Cullison: We object to that as a collateral matter.

Chairman Bond: You may proceed.

Walter Marling continues with the witness:

Q. I hand you a letter which you may refer to, is that the date you talked to the coal producers?

A. Yes sir it is.

Q. What did you find out with respect to the price of coal mined at Lehigh?

Mr. Cullison: We make the same objection and further, it has no bearing on the case.

Chairman Bond: Overruled.

[fol. 360] A. Cooley Brothers at Lehigh, Oklahoma have as their current price—or the price that day, July 5th, 1946, for one ton of coal delivered FOB Colgate, Oklahoma is $5.31 per ton of coal and the B.T.U.'s per pound is 11,500.

Q. Per pound?

A. Per pound.

Mr. Cullison: This man didn't qualify as an expert and we object to his testifying as to what he heard from other people, as hearsay evidence. They are introducing this witness without proper foundation.

Mr. Marlin: You are not an engineer?

A. No sir.

Q. You do have a signed statement containing the price of coal and the B.T.U. content of coal mined in that particular area, mined as of July 5th, 1946?

A. I have.

Mr. Cullison: We would like to have it marked as an Exhibit.

Reporters Note: Whereupon said letter was marked Exhibit 40.

Mr. Rolston: To which we object as hearsay evidence, and for the further reason we don't have the opportunity to cross examine the parties preparing this exhibit.

Chairman Bond: When this Commissioner became a member of this Commission and parties objected to the introduction of exhibits of this kind this Commissioner was of the opinion that they were not admissable: That they were probably hearsay evidence, as Counsel had no [fol. 361] opportunity to examine the person preparing the exhibit and the Supreme Court has permitted us to admit them for what they are worth.

They may be admitted for what they are worth. Testimony of this kind should be proved by an expert witness.

Mr. Cullison: No proper foundation has been made. He says that he is a lawyer.

Chairman Bond: It may be admissable for what its worth. He can't qualify, however it may be a lawyer is a scientific man.

Mr. Rolston: I would like to know whether this is offered in the Legislative or Judicial part of the Hearing.

Chairman Bond: You are entitled to that. State whether his is a Legislative or Judicial Proceeding or a mixed proceeding.

Walter Marlin: Both.

Walter Marlin: Mr. McBee, state of your own knowledge and I believe as a matter of record in the Corporation Commission, the B.T.U. content of the gas produced in the Guymon-Hugoton sector?

Mr. Cullison: I object because no foundation has been laid.

Chairman Bond: If it is of record you can establish the authentiey of the record.

Walter Marlin: I believe Mr. Lawrence Alley has the record. If he can be called, we will establish that fact.

Chairman Bond: This witness is wholly unqualified.

[fol. 362] Mr. Cullison: I don't understand that a record that is filed, because it is filed, is correct. Because a record is filed doesn't prove anything.

Chairman Bond: That is true but some expert might have filed it. It may be admissable testimony.

Witness excused.

[fol. 363] Whereupon, M. L. Mayfield, was recalled to the witness stand:

Witness Examined by Walter Marlin:

Q. State your name for the record.

A. M. L. Mayfield.

Q. Have you been heretofore called as a witness to testify in this case?

A. Yes for Peerless Oil and Gas Company.

Q. Tell whether you are in position at this time—that you can tell them and that you do know the B. T. U. content of the gas produced in Texas County, in the Guymon-Hugoton Field?

A. Yes sir I know.

Q. 1000 cubic feet?

A. Yes sir.

Q. Give it to us, please sir.

A. It will vary to some extent, between 950 to 1050 B. T. U. per cubic foot at 14.735.

Q. Would you state that an assumed figure of 1000 B. T. U.

per cubic foot of gas produced in Texas County would be a good average?

A. I believe it could be considered a good average if measured at 14.735.

Q. If given you the price of coal and the B. T. U. content F. O. B. a car in Oklahoma, Lehigh, Oklahoma with the knowledge of the B. T. U. content of gas produced in the Hugoton Field, could you by process of figures arrive at a comparative value of coal and gas?

Mr. Cullison: We object to that as repetition. He testified to that the other day.

[fol. 364] Earl Pruett: Mr. Mayfield testified as to comparative prices and values in Kansas City. That is where Cities Service was delivering gas. What Mr. Marlin wants to do is to compare the value on B. T. U. basis in the State of Oklahoma.

Commissioner Armstrong: Are you prepared to answer the question?

A. Yes sir.

Commissioner Armstrong: The objection is overruled.

A. It can be calculated.

Mr. Marlin Continues with the Witness:

Q. I hand you what is marked Intervenors Exhibit Forty, which states the price of Coal and B. T. U. and ask if this doesn't take too long—if you can give the comparative price?

Mr. Cullison: We object to the witness examining the letter because it hasn't been offered in the case.

Chairman Bond: Do you have any records with you?

A. I don't know the conditions of the letter.

Walter Marlin: I merely handed him the letter in order to have a given price or given B. T. U., based on a price of $5.31 per ton, a 2000# ton, with a B. T. U. content of 11,500 per pound make the comparison with gas produced in the Texas County, Hugoton Field.

Mr. Cullison: Does our general objection to the collateral matter stand?

Mr. Rolston: We object to that question, if this is a hypothetical question to this witness, it doesn't produce all the [fol. 365] elements necessary upon cost to base an answer.

Chairman Bond: Overruled. The witness may answer.

Mr. Cullison: It doesn't state what kind of coal it is. Whether it is soft coal or bitumin-us or anth-*i*cite or where the price of coal is calculated at.

Chairman Bond: You may cross-examine him and ask him whether it is anth-*i*cite or bituminous or what character of coal it is.

(The Witness.)

A. Will you give me the basic price you want this compared at?

Walter Marlin Continues with the Witness:

Q. Basic price of coal?

A. Basic price of gas. Do you want me to take the price of this coal and calculate it as to the comparative price of gas assuming that it has 1000 B. T. U.'s?

Q. Yes.

Mr. Cullison: At Guymon?

Q. Coal there—Lehigh.

The price of coal at $5.31 is F. O. B. Colgate Oklahoma and the gas is in Texas County.

Mr. Rolston: I would like to have him read the letter to the Commission.

Chairman Bond: If you are going to ask him to read the letter, the Commission may admit it. The Commission has ruled that he is to put the hypothetical question.

Mr. Cullison: It doesn't contain the elements of freight from Colgate to Guymon.

[fol. 366] Chairman Bond: One is the price of coal where it is mined and the other is the price of gas where it is produced.

Mr. Cullison: He stated that it was as of Guymon.

Chairman Bond: One is in the Colgate Field and the other is in the Hugoton Field.

Mr. Cullison: You want to compare the Guymon Gas with the Colgate Coal at Colgate?

Walter Marlin: That is right.

Mr. Ralston: Is it in connection with the price of gas for Royalty gas or for Producers gas?

Chairman Bond: You may make any inquiry you desire concerning the price of gas in the Hugoton Field.

Mr. Cullison: On the price of gas in the Hugoton Field.

Chairman Bond: That is what we are attempting to fix.

Mr. Ralston: For Royalty holders or producers?

Chairman Bond: You may ask the witness.

Mr. Cullison: I understand that the price is an ascertained fact.

Chairman Bond: It is that. This is a hypothetical question.

Mr. Cullison: They are not dealing in value then?

Chairman Bond: No sir.

Walter Marlin Continues with the Witness:

Q. What is the comparative price?

A. Twenty-three cents is equivalent.

Q. On a B. T. U. basis?

A. On a straight B. T. U. basis, as compared to 1000 [fol. 367] B. T. U. natural gas not taking in account the efficiency.

Floyd Green: Twenty-three cents per thousand cubic feet?

A. Yes sir.

[fol. 368] Q. Assuming the price of coal, in the McAlester District, McAlester, Oklahoma, to be $7.35 a ton, f. o. b. cars at McAlester, with a BTU content of 13500 per pound, what would be the comparative value of gas produced in the Guymon-Hugoton Field on a BTU basis?

A. I get——

Judge Cullison: The same objection, with the further addition that it is usual when a man asks hypothetical questions he is required to vouch that he will produce the evidence, when none has been previously produced. It is assumed that he will produce that evidence.

Chairman Bond: It is assumed that he will produce the evidence.

A. I get 27 cents on the conditions given me, for McAlester coal at $7.35 per two thousand pound ton, 13500 BTU per pound. Based on the conditions stated gas would be worth 27 cents. In other words, gas to supply the same amount of heating value would cost twenty-seven cents.

Q. Now, I would like to give you two more,—assuming coal to be worth $5.35, at Henrietta, with a BTU content of

13,000 B. T. U. per pound, will you give us the comparative B. T. U. value of gas produced in the Guymon-Hugoton Field, in Texas County?

Judge Cullison: The same objection.

Chairman Bond: Overruled,—exceptions allowed.

[fol. 369] A. It's about 20.3 cents per thousand cubic feet for the gas.

Mr. Marlin: May it please the Commission, I want to put Mr. McBee back on the stand.

Chairman Bond: Mr. McBee may be recalled. Does anyone wish to cross examine this witness?

Reporter's Note: No attorney expressing a desire to cross examine the witness Mayfield at this time he was withdrawn from the witness stand, and

"W. D. McBee, a witness who has heretofore testified at this hearing, was recalled and further testified as follows:

Direct examination.

By Mr. Marlin:

Q. Mr. McBee, I hand you an instrument which has been marked Exhibit 43, for identification, and ask you to examine that and state whether or not you have seen it before.

A. I have.

Q. Where?

A. At Coalgate, or really between Coalgate and Lehigh, at the Headquarters of the Dunn Fuel and Lumber Company.

Q. Don't state the conversation, but state whether you had a conversation with a coal miner, coal operator, at Lehigh?

A. I did.

Q. At that time were you getting prices on coal f.o.b. Lehigh or Coalgate?

A. I was.

[fol. 370] Q. Is the price set out in that letter?

A. It is.

Q. At that time did you ask for the B T U content of that same coal?

A. I did.

Q. Is the B T U content set out in that exhibit 43?

A. Yes, sir.

Q. Is that written statement or letter signed by the man with whom you talked?

A. Yes, sir.

Q. And delivered to you?

A. Yes, sir.

Q. And is it in the same condition it was when signed and delivered to you?

A. Yes, sir.

Judge Cullison: We object to this as being a collateral matter, a hearsay conversation, a conversation had out of the presence of the respondent, not tending to prove any issue in the case and not the best evidence.

Chairman Bond: It isn't the best evidence under ordinary rules of court procedure, but under the rules of this Commission the courts have permitted such letters to be received for what they are worth and the Commission receives it for what it is worth. You are offering the exhibit?

Mr. Marlin: Yes, we offer the exhibit, 43.

[fol. 371] Mr. Rolston: At this time I will ask,—is it received as to both the legislative and judicial——

Chairman Bond: It is received for the purpose of this case. Exceptions allowed.

Reporter's Note: Exhibit 43 is as follows:

"Dunn Fuel & Lumber Co.
Producers of Coalgate Coal
Phone 807F2 Coalgate, Oklahoma July 5 1946

To whom it May Concern:

At present time & under present conditions price of Lump Coal F O B Coalgate, loaded on cars, is $5.31, subject to change without notice. All car lot sales handled through Southern Coal Co., Southwestern Life Bldg., Dallas, Texas. Analysis per Army report April 22 1944 is 12292 BTUs per pound of 2000 lbs—

(Signed) Dunn Fuel & Lbr Co
by Leon Davis"

Q. I show you Exhibit 41, and will ask you the same question,—you talked to the writer of that letter?

A. I did.

Q. With reference to the price of coal delivered f.o.b. cars at McAlester, Oklahoma?

A. Yes, sir.

Q. The price was given to you as stated in that letter?

A. Yes, sir.

Q. The B T U content was stated to you as stated in that letter?

[fol. 372] A. Yes, sir.

Q. He then wrote the letter, signed it and gave it to you?

A. Yes, sir.

Q. It is now in the same condition it was when delivered to you?

A. Yes, sir.

Q. Examined Exhibit 42,—is the BTU content stated in that letter?

A. Yes, sir.

Q. You had a conversation with the writer of that letter, he then wrote and delivered the letter to you?

A. Yes, sir.

Q. And is that letter in the same condition it was when given to you?

A. Yes, sir.

Mr. Marlin: We offer in evidence Exhibits 41, 42 and 43.

Judge Cullison: Somebody has placed some addenda on there, with a lead pencil.

Chairman Bond: Any lead pencil addenda will be stricken.

Judge Cullison: These letters say "this is not a quotation."

Chairman Bond: The letters are received, for what they are worth.

Mr. Rolston: This letter, exhibit 40, says (counsel read Exhibit 40) now, if Texas is going to fix the price of coal [fol. 373] in Oklahoma, at Lehigh,—well, just let the record show that we object to all these letters, Exhibits 40, 41, 42 and 43, for the reason they are incompetent, irrelevant and immaterial, do not tend to prove any issue in the case, hearsay, not the best evidence and we have not been afforded an opportunity to cross examine the writer. The testimony of Mr. McBee is all hearsay and each of these letters states that it does not disclose a quotation of the price of coal at any of those stations in Oklahoma, and this is an injection of collateral matter into this case. For those reasons and

for all the reasons heretofore stated we object to these letters.

Chairman Bond: Overruled,—exceptions allowed.

Cross-examination.

By Judge Cullison:

Q. To sum this up, you went out and had a conversation with these people,—talked to them?

A. Yes, sir.

Q. And had them to write some letters to you?

A. Yes, I wanted the prices of coal at those various places.

Q. Well, the first letter said they were not quoting you prices.

A. The McAlester Company quoted the price f.o.b. cars at the shipping point.

Q. Didn't all of them say they were not quoting prices to you?

A. The McAlester Company did. It says, "——this is not a quotation but is the present market price."

[fol. 374] Q. All of those letters contain that expression, —that it is not a quotation?

A. But they say it is the present market price. I was trying to get the B T U and the prices.

Q. You weren't trying to buy anything at all?

A. No, sir.

Q. They understood that?

A. Yes, they did.

Q. You were just trying to get them to write letters to you to be used in this case, weren't you?

A. Yes, to get the price of coal.

Judge Cullison: We object further, as self-serving.

Redirect examination.

By Mr. Marlin:

Q. I believe OPA is not functioning in that Field any more?

A. No, sir.

Mr. Marlin: With the exception of furnishing a copy of one of the Phillips leases, I believe that's all. I would like to have all the testimony heretofore offered in this case con-

sidered in support of our petition in intervention, insofar as that testimony is applicable.

Judge Cullison: Does he mean all of it, whether for him or against him?

Chairman Bond: He said all the testimony.

Mr. Rolston: I want to ask the attorney for the Commissioners of the Land Office if the evidence as to the price of [fol. 375] gas, as compared to the cost of coal,—that is, if the 23 cent price of gas in the Hugoton Field as against $5.31 for a ton of coal at Coalgate, and the other illustrations offered, if that 23 cents is for royalty gas or producer gas?

Mr. Marlin: I would say this, that the Commissioners of the Land Office are paid for such royalty gas, however, the purpose of the evidence was for the purpose of fixing the uniform price of gas in the Hugoton Field area, without any distinction. The purpose of the testimony is to establish the uniform price of gas in the Guymon-Hugoton area.

Recross-examination.

By Judge Cullison:

Q. Mr. McBee, the State has no royalty interest in Section 5 or Section 8, particularly Section 8, in controversy between Peerless and Cities Service Gas Company, has it?

A. I can't answer that question,—Mr. Pierce may know. I don't know whether we have or not. We have scattered contracts all over the country.

Mr. Marlin: If you know, Judge Cullison, and say that we do not have, it will be all right.

Judge Cullison: I think it is correct that they have no royalty interest in Section 8, the matter in interest between Peerless and Cities Service Gas Company.

Mr. Marlin: I don't think we do.

Judge Cullison: It is agreed, then, that they have none.

Chairman Bond: Very well.

[fol. 376] Chairman Bond: Mr. Marlin, do you have anything further?

Mr. Marlin: Not at this time.

Chairman Bond: The Commission will recess until 1:30 P. M.

Whereupon the witness was excused and the further hearing of this case was recessed until 1:30 o'clock P.M. on July 9, 1946.

[fol. 377] Whereupon, at 1:30 o'clock p.m. the case was resumed and the following proceedings were had; to-wit:

[fol. 378] Chairman Bond: Are you gentlemen ready to proceed?

Earl Pruet: Yes, sir.

Mr. Cullison: We are ready.

Mr. McBee: We want to identify Exhibits 45, 46, 47 which Mr. Marlin failed to introduce. One is a Resolution passed by the Commissioners of the Land Office on May 20, 1946; another is the "Operating Regulations to govern the Production of Oil and Gas" and another exhibit is a Resolution passed by the Commissioners of the Land office on March 29th, 1927. Exhibit 46, the Operating Regulations, is a Department Bulletin from the Department of the Interior which outlines the particular method of measuring the gas, they were adopted long ago by the Department. I am introducing this for measurement of gas.

Mr. Rolston: That is from the standpoint of the Royalty Owner?

Mr. McBee: I don't care if it is Royalty Owner or what.

Mr. Cullison: I note here in your Oil and Gas Mining Lease form—in paragraph two it says, "The Lessee hereby agrees to deliver or cause to be delivered to The Commissioners of the Land Office of the State of Oklahoma, or their successors, a royalty, of one-eighth part of the oil or gas produced from the leased premises or in lieu thereof, pay to the State the market value of said royalty interest, as the Commissioners may elect. All oil and gas due to the State under this contract, shall be delivered by the lessee herein, free of cost, into pipe lines, tanks or cars, or settled or paid for before removing same from the premises if handled in any other way. The lessee shall furnish to the lessor certi- [fol. 379] fied copies of guage tickets, sales, shipment and amount of gross production, at their office in Oklahoma City. Gas to be metered according to Federal Departmental Schedule and Regulations."

Do the Commissioners elect whether they take the gas or the money?

Mr. McBee: So far as I know, they will accept the money if it is 12½%.

Mr. Cullison: That is one-eighth?

Mr. McBee: Yes.

Mr. Cullison: Then by that act they sanction that provision "paid to the state of said market royalty interest"?

Mr. McBee: I don't know what case you are referring to.

Mr. Cullison: Do they have any gas delivered to them?

Mr. McBee: No, sir. You will find that that is an option with the Commission.

Mr. Cullison: Yes. Have they elected which they will do?

Mr. McBee: Not since I have been there.

Mr. Cullison: But they have always taken the money, not the gas?

Mr. McBee: They will take the money where it is 12½%.

Mr. Cullison: Do they take this—it says "shall be delivered by the lessee herein, free of cost, into pipe lines, tanks or cars, etc." do they take it cars or pipe lines?

Mr. McBee: They have always taken 12½% in cash.

Mr. Cullison: Then practically speaking, they have elected to which way they will accept it then?

Mr. McBee: If they can get market price.

Mr. Cullison: It says further, "The lessee hereby agrees to deliver, or cause to be delivered to the Commissioners of [fol. 380] the Land Office, of said State, a royalty of one-eighth of all casing-head or drip, gas or gasoline, produced or extracted from any gas produced from any well on said premises, or in lieu thereof, pay the State the market value of said royalty interest as the Commissioners of the Land Office may elect."

Mr. McBee: There hasn't been anything else agreed upon there is supposed to be 12½% and it is at 60 degrees F.

Mr. Cullison: That is if the market is based upon that pressure you get one-eighth of the market price?

Mr. McBee: Yes.

Mr. Cullison: Now I think that you gentlemen haven't taken any money from Phillips but you have from Cities Service Gas?

Mr. McBee: I think they have.

Mr. Cullison: That was at four cents?

Mr. McBee: That was under a contract made before we acquired the land, it wasn't on the regular lease form.

Mr. Cullison: You executed the order?

Mr. McBee: We settled a lawsuit with you in which we had to adopt the form of lease that was given to the old Empire Refining Company. Our lease forms are not the same, we have a different contract now.

Mr. Cullison: I understand you have an order in which you take one-eighth of four cents from us.

Mr. McBee. On these tracts I told you about.

Mr. Cullison: Notwithstanding the fact that you are entitled to one-eighth market value at the well or delivered into the pipe line on the premises, you have customarily been charging one-eighth of four cents from us.

[fol. 381] Mr. McBee: I don't think so, under any of our lease contracts, because we don't do this, there are certain restrictions on us, we can only take 12½% of the market value of the gas, I am not in the bookkeeping department, and I might be mistaken, but I think I am right.

Mr. Cullison: Then we haven't paid some of them?

Mr. McBee: I don't know.

Mr. Cullison: You would not say that we didn't?

Mr. McBee: No, sir, I wouldn't.

Floyd Green: Do you offer into the record one of the lease forms?

Mr. McBee: I don't think so, I don't think it is necessary.

Mr. Ralston: We object to Exhibits 45, 46 and 47 to which the Respondent objects to Exhibit Number 45 for the reason and upon the grounds that it is a resolution adopted by the Commissioners of the Land Office as to the measurement of gas and the price of gas, not authorizing the Commissioners of the Land Office to Intervene in this action, the Court has already allowed the Intervention and its superfluous evidence.

We object to Exhibit 46 for the reason that it appears to be operating regulations of the production of oil and gas in the Department of the Interior. We can see that it has any or no connection or tends to prove or disapprove any issues in this case. What the Department of the Interior requires of their lessees has nothing to do in this lawsuit. We object to Exhibit 47 for the same reasons as we objected to Exhibit 46.

Chairman Bond: Overruled, exceptions allowed. Exhibits received.

Witness excused.

[fol. 382] Whereupon Mr. Ernest C. Arnold, of lawful age, being first duly sworn, testified as follows to-wit:

Witness examined by Earl Pruet.

Q. You may state your name, please.
A. Ernest C. Arnold.
Q. What if anything is your connection with the Federal Government?
A. Supervisor of the Oil and Gas Operations in Osage County, Oklahoma with the Osage Agency.
Q. How long have you been with the Department in that capacity?
A. I have been at the Osage Agency for five years and prior to that time—August 1, 1941, with the U. S. Geological Survey for twelve years.
Q. Are you familiar with the history of the sale of the natural gas of the Federal Government of the Osage Lands in the Osage Reservation?
A. Yes, sir.
Q. Just tell the Commission what you know about that.

Mr. Cullison: To which we object as immaterial and not tending to prove any issue and injecting a collateral issue.
Chairman Bond: Overruled. Exceptions allowed.

A. The first lease in Osage County was a blanket lease by Foster on the east side of Osage County and they paid from 1896 to 1906, they paid fifty dollars royalty per year. The lease was renewed in 1906 for another ten years and they paid one hundred dollars per year as royalty. In 1916 the Foster blanket lease was terminated and they gave leases for oil and leases for gas and the county was leased up in [fol. 383] separate leases. The price of gas was fixed in 1916 at 18 cents and the Indians got one-sixth royalty or three cents. That has been adjusted every five years since that time and has remained at eighteen cents. In 1931 at the bottom of the depression, they had a Hearing before the Secretary of the Interior and the Secretary maintained the eighteen cents and it's been that ever since.
Q. Eighteen cents per thousand cubic feet?
A. Yes, based on 10 oz. above atmosphere.
Q. What companies are pumping this gas at this time?
A. There is Cities Service Oil Company, Cities Service Gas Company, Oklahoma Water and Power Company, Kay,

Four Acre, Sagmore of Pennsylvania, and the City of Pawhuska have a lease and are not producing now, that is all that I can think of right now.

Mr. Cullison examines the Witness:

Q. These are the purchasers of gas?
A. The Lessees.
Q. You mentioned Cities Service Gas?
A. Yes.
Q. I thought you said Cities Service Oil?
A. I intended to say both.
Q. Do you know how that price originated?
A. In 1916 some of the lessees agreed to pay eighteen cents.
Q. The fact is, that about the time of the first World War the American Pipe Line Company needed gas pretty badly didn't they and they offered to pay that price, in that extra ordinary situation, wasn't that really the origin of the price? [fol. 384] A. I wasn't there at that time, but in a general way some of the operators offered it. I don't know the situation.
Q. Incredible as it may seem, I think that Calvin Coolidge was one of its Attorneys and in order that they might furnish the smelters at Caney with gas to smelt zinc, and oar to help fight the war, Calvin Coolidge of the American Pipe Line Company offered eighteen cents, isn't that correct?
A. I would not be certain.
Q. I ask you if it isn't a fact, that in your knowledge the companies are paying a royalty on the basis of three cents as one-sixth of the whole price and aren't they selling gas for five and six cents, some gas?
A. I don't know of any that they are selling lower than eighteen cents. I don't know that they are selling any at five and six cents.
Q. You don't know what is paid for the gas produced by these lessees?
A. No, because we don't know—it is three cents royalty.
Q. Periodically you check this—they say that this is so high, but the production is so small that it doesn't warrant to try and get the Secretary of the Interior to change it, isn't that really the situation that exists?
A. Well, I don't know because they haven't had any hearings since 1931. They have told us both formally and informally that eighteen cents was too high.

Q. The fact that there is very little production is the reason they have let it go?

[fol. 385] A. Compared to what it was, yes.

Q. Take the lease that is now owned by Cities Service Gas Company, it has two wells on it?

A. That is all.

Q. And the production for these two wells is very triffling?

A. Very small.

Q. That is sold to the Union Gas System isn't it?

A. That is right.

Q. You don't know what its sold at?

A. No, I imagine I have a copy of the contract at the office.

Q. The order of production would be around two or three hundred thousand per day?

A. In that neighborhood.

Q. That isn't hardly a commercial well—isn't two million a limit for the commercial well?

A. I don't know about the State of Oklahoma because it doesn't apply in the Osage Nation.

Q. I am trying to get over to the Commission that these are very small wells.

A. These two on Cities Service Gas Company leases are very small, they are two wells that produce oil and gas and the Cities Service waived the rights too and they bought it just to help the operators that was on the lease, they are not making very much either, they are coming from the Cities Service Gas Company lease but the Cities Service Gas Company didn't want to pay any interest in the wells.

Q. Whose selling it?

A. Anderson Prichard and some of their partners.

[fol. 386] Q. To whom are they selling it to?

A. Cities Service Gas Company at seven cents.

[fol. 387] Ross Pierce, recalled for cross-examination, further testified as follows:

Cross-examination.

By Mr. Rolston:

Q. Mr. Pierce, you are the same Mr. Pierce who was on the stand this morning, before recess?

A. Yes, sir.

Q. As I understood your testimony this morning, you are head of the oil and gas department of the Commissioners of the Land Office?

A. That's right.

Q. You testified, as I recall, that there are 49,600 acres that the Commissioners of the Land Office own in Texas County?

A. That's right.

Q. And of that amount 30160 acres are under lease?

A. Yes, sir.

Q. And of that amount 6099.92 acres are producing gas?

A. That's right.

Q. Do you have any leases or any interest in the royalty from Section 8, Township 4, North, Range 16, ECM, Texas County, Oklahoma?

A. No, sir, not on production,—I don't know——.

Q. Do you have any such interest in that section?

A. I don't know from memory whether we would have any interest in that, or not, but it isn't on production at present.

Q. Well, that is the same acreage as is involved in this case, on which Peerless Oil & Gas Company has a lease?

[fol. 388] A. I don't know that.

Q. Now, as I understood you this morning, you said the Commissioners of the Land Office were receiving four and five cents for gas out there?

A. That's right.

Q. That is the price being paid in the Field,—four and five cents?

A. That's the prices being submitted to us and paid the Commissioners of the Land Office.

Q. From what leases do you get five cents?

A. The Republic Natural Gas Company pays five cents straight through. Cabot Carbon Company pays five cents on half of their production and——

Q. Was that due to a special order made by this Commission some time ago, granting a permit for the construction of a carbon black plant?

A. I don't know. It would be hearsay if I should testify to that. I wouldn't know, of my own knowledge.

Q. And you say Republic is paying five cents for royalty gas?

A. That's right.

Q. Do you know the price for which Republic sells that gas?

A. No, sir.

Q. You have no knowledge of the fact that Republic sells that gas to Cities Service Gas Company at 4¢ at the well head and there is one-half cent for gathering charges?

[fol. 389] A. No, I have never made any investigation of that.

Q. Do you know who they sell their gas to?

A. Only by hearsay.

Q. As a matter of fact, your knowledge of the sale price of gas in the Hugoton Field is rather limited, isn't it?

A. I just gather it from division orders and run sheets that have come into the office.

Q. Have you ever been out in the Guymon-Hugoton Field?

A. I have.

Q. Have you had occasion to check into the gathering system of any of the producers in the Field?

A. Well, in just a limited way. We had one well that was drilled in March, 1945 and we didn't have a connection until this spring, and I understand right now they are making the connection. They told me when I first inquired that it was dedicated to the Cities Service and they couldn't make a contract with anybody else.

Q. Who are you talking about now?

A. Skelly.

Q. Getting back to the prices,—what do you mean when you say the price paid for gas is four and five cents?

A. I understand the reason for that is that there was an OPA order setting the price of gas at four cents, and the Corporation Commission set it at five cents and they compromised on paying four cents for half and five for

[fol. 390] half,—that's the way the run sheets come into the office,—I figured on a 50-50 basis.

By Mr. Green, Conservation Attorney:

Q. That's on one well of the Cabot Carbon Company runs?

A. That's right.

Mr. Pruet: I will say this for Cabot,—they pay five cents for what they use in that plant and four cents for what they use for other purposes. Isn't that the way it is?

Mr. Green: That's right. They apportion the prices on the basis between four and five cents, but they pay five cents for all gas taken into the plant, because of the Commission order.

The Witness: Well, they are paying 50-50.

Chairman Bond: (Addressing Mr. Green:) Well, you better enforce our order up there.

Mr. Green: I have checked them,—they are complying with the order,—he is mistaken as to why they split the price——

Mr. Pruet: If I may speak,—we are paying according to that order.

Chairman Bond: Well, that's right.

(Cross-examination resumed.)

Q. Mr. Pierce, does the Peerless Oil and Gas Company have any of your leases?

A. I'm pretty sure they do.

Q. Do you know what price you receive from them?

A. We don't have any Peerless leases on production.

(The witness excused.)

[fol. 391] M. L. Mayfield, recalled, further testified as follows:

Direct Examination.

By Mr. Pruett:

Q. You are the same M. L. Mayfield who testified previously as a witness in this case?

A. Yes, sir.

Q. In the meantime, since the first hearing in this case, in which you testified, you have been furnished a copy of your testimony as transcribed by the reporters, in order that, as I understand it, some corrections are to be made in it?

A. Yes, sir.

Q. If you will, at this time you may take that transcript and dictate into the record, so counsel for the respondent may have those corrections, whatever changes by way of corrections you wish to make.

A. On page 2, Take 8, EW, seventh line form bottom of that page, change the first word in that line from "the" to "natural"; in the next line below, change the word "administrator" to the word "administration". Then in the same line insert the word "district" between "assistant" and "director", making it to read "Assistant District Director".

On page 3, Take 8, EW, fourth line from top of that page, the word "advising" should be changed to the word "advisory". In line 7, same page, the word "for" should be changed to the word "on".

On page 4, Take 8, EW, in the last answer, fourth line from the bottom, change the first line of the answer to [fol. 392] read, "Natural gas as found may be either associated with", striking out the word "produced" and putting the word "found" in its place.

On page 5, Take 8, EW, in the first answer on that page, to the question, "Is the wet gas what they make gasoline out of?", the answer should read, "Yes, sir, through absorption facilities the heavier hydrocarbons are removed and recovered as natural gasoline",—in other words, strike out the word "for" and put in "and" strike out the word "recovering" and put in "recovered as",—strike out the word "from" and put in "and the". Strike out the word "the" after the word "petroleum" in the third line of that answer. In the next line strike out the word "isopentane" and insert "isobutane and propane". Then there should be a period after the word "propane", and start a new sentence with "After."

Then, in the next answer, with reference to the question, "What are the general characteristics of natural gas produced in the Guymon-Hugoton Field?", in the third line of that answer the words "of liquefiables", should be

inserted immediately following ".36 gallons", making it to read, "it contains approximately .36 gallons of liquefiables per thousand cubic feet of gas". Then strike out "liquefying". The word "liquefying" should be deleted. The word "content" should follow B.T.U.,—that's all on that page.

On page 6, Take 8, on the fourth line from the bottom is a misspelled word,—it should be "carbon" black. In the next line below the word "or" should be changed to "of", making it to read "fractions of gas" instead of "fractions or gas".

[fol. 393] A. (Continued:) On page 1, Take 9, RFM 5-8-46, in the second line of the first answer, the word "of" should be deleted and a comma inserted in its stead.

On page 8, T 8, RFM 5-8-46, in the first answer, second line of the answer, the word "cross" should be "cost".

Then on the same page, down lower, in the table, where you have "Fuel oil @ 28¢ per gal." it should be "Fuel Oil @ $1.18 per barrel." I think I may have given it as 2.8.

Then on the next page, page 9, T 8, RFM, in the table under "Cost of Converted Therm", it has 2.07,—the cipher should be 5 and instead of "2.07" it should be "2.57".

Then in the paragraph following that table, in the second line, it says "lignite and bituminous coal are used", delete "lignite", delete "and", change "are" to is, making it read, "bituminous coal is used." I would like to make that change, if permissible.

On page 2, Take 10, JLK, down in the middle of the page, in the last line of the answer relative to crude, it reads, "gas is worth fifty cents", it should be "twenty cents".

On page 6, Take 10 JLK, in the middle of the page appears a question to which there is no answer,—there was an answer, but it is not shown. The question reads, "State whether or not the sale of and taking out of the Hugoton Field in Texas County, Oklahoma, the Guymon-Hugoton Field, of gas, at a price between four and five cents at the wellhead is economic waste? In your opinion would the [fol. 394] sale and the taking of gas out of that Field, at that price, at the wellhead, constitute economic waste." The question was answered "yes", and the answer should be inserted.

I believe that's all I have.

Judge Cullison: I read that transcript once, but I read it as written, and with these numerous changes I couldn't instantly or immediately cross-examine. Some of these changes are pretty drastic, and if we might have another witness called and afford me an opportunity to read this before—

Chairman Bond: You will be given an opportunity, Judge, to examine it before you cross examine.

The witness is excused.

[fol. 395] Mr. Cullison: I would like this exhibit marked.

(Whereupon the Reporter marks the exhibit offered, Exhibit 48).

Mr. Cullison: I would like to read Exhibit 48 into the record.

"Otis & Co., Cleveland, New York, Chicago, and other Cities, Terminal Tower, Cleveland 13, Ohio,

November 20, 1945

Mr. William D. Weidlein, President
Mid-Continent Gas Transmission Co.
1910 Rand Tower
Minneapolis 2, Minnesota.

Dear Mr. Weidlein:

It is our understanding that your Company proposes to construct a pipe line from the Hugoton Field in Kansas to the Kansas City area at an estimated cost of from $18,000,000 to $22,000,000. Included in the above estimate is the cost of the compressor stations and the necessary gathering lines.

Subject to satisfactory contracts for the sale of gas to the Kansas City Gas Company serving Kansas City, Missouri and environs, Wyandotte Gas Company serving Kansas City, Kansas and the Gas Service Company serving Wichita and Topeka, and subject to a satisfactory engineer's report by J. F. Pritchard & Co. as to construction and operating costs, Otis & Co. is willing to undertake the proposed financing on the basis of approximately 50% debt, 25% preferred and 25% common equity. We reserve the right to alter the above percentages should it [fol. 396] be deemed a-visable.

There would also have to be evidence of a satisfactory contract for the purchase of gas by Mid-Continent Gas Transmission Co. from Peerless Oil and Gas Company and others, with dedication of enough acreage to assure a supply of gas for the life of the contracts with the companies purchasing the gas from Mid-Continent, as well as assurance by competent geologists as to adequate gas reserves.

Should the Kansas City and Wyandotte County Gas Companies be offered for sale by their owners under the public utility holding company act, Otis & Co. would be willing to form accounts to bid competitively for each company.

Very truly yours, Otis & Co. (S.) Wm. R. Daley."

WRD:T

Mr. Cullison: We offer the exhibit in evidence as part of the Cross-Examination on the part of Mr. Weidlein.

Chairman Bond: Received.

Chairman Bond: The Commission will recess until ten o'clock in the morning.

Adjourned.

[fol. 397] Mr. Pruet: If the Commission please, at this time I wish to offer in evidence Exhibit 49, papers having to do with the qualification of the Empire Natural Gas Company to do business in the State of Oklahoma, on file with the Secretary of State, which reflects that the papers were filed on April 19, 1922, at four o'clock, P. M.

Judge Cullison: We are willing to admit, to save encumbering the record, that they have a permit to do business in the State of Oklahoma. The Court has held that it doesn't matter what you are permitted to do. We want something more than to show that we have been permitted to do business in the State of Oklahoma, and we object to this as redundant.

Mr. Pruet: We are offering it to show that they are qualified to do business in the State of Oklahoma, after the enactment of all the Acts, and they are not entitled to attack the constitutionality of the Acts under which they are permitted to operate. We offer this to show that they are authorized to engage in the business of buying and selling natural gas in this State, and we have asked them to furnish us

contracts, to show that they are engaged in the business of buying and selling gas in the State of Oklahoma.

And we offer Exhibit 50, which was filed on August 3rd, 1927, at 11:00 o'clock A. M., which reflects the change of the name from Empire Gas Company to Cities Service Gas Company.

[fol. 398] We also offer in evidence Exhibit 51, being Amended Articles of Incorporation of the Cities Service Gas Company, which were filed with the Secretary of State on April 9, 1926, at 5:00 o'clock P. M., and

We also offer in evidence Exhibit 52, which is further amended Articles of Incorporation of Cities Service Gas Company, on file in the office of the Secretary of State. We offer these in evidence and ask permission to withdraw them and submit copies later.

Judge Cullison: What is the purpose of the introduction of these documents,—you didn't explain the purpose of the last three?

Mr. Pruet: I want to show that from time to time you have filed Amended Articles of Incorporation with the Secretary of State of the State of Oklahoma.

Judge Cullison: I would like to know what his purpose is in offering these exhibits,—if he just wants to encumber the record so nobody could appeal this case, it isn't a fair method. We'll admit everything that these papers prove. We'll admit that we have a permit and have had since the date of the first one,—I don't remember that date.

Mr. Pruet: 19th of April, 1922, at four o'clock P. M.

Judge Cullison: Since the 19th of April, 1922, we have had a permit to do business in the State of Oklahoma; we admit that we do buy gas in Oklahoma, that we do sell gas in Oklahoma——

[fol. 399] Mr. Pruet: Natural gas?

Judge Cullison: Natural gas.

Mr. Pruet: Do you admit that your predecessor, the Empire Gas Company,— wasn't that the name of the Company when this paper was filed, in 1922?

Judge Cullison: Yes.

Mr. Pruet: And that the name of that Company was, on August 3rd, 1927, changed to the Cities Service Gas Company?

Judge Cullison: That's correct.

Mr. Pruett: And you have been engaged, during that period, in the State of Oklahoma, under that permit, in the business of buying and selling gas in the State of Oklahoma?

Judge Cullison: No, not "under that permit",—we admit we have been engaged in buying and selling gas in Oklahoma.

Mr. Pruet: And do you admit that you have been engaged in the buying and selling of gas in Oklahoma, in part, at least, for the purposes of furnishing light, heat and power?

Judge Cullison: Directly or indirectly.

Mr. Pruet: Directly or indirectly.

Judge Cullison: Now, are they withdrawn?

Mr. Pruet: There may be some small parts in these exhibits that I would like to have in the record. I don't want to encumber the record to the extent of embarrassing your client to the extent that it couldn't appeal——

Judge Cullison: Now, if the Commission please, let him [fol. 400] pick out what he needs in there.

Mr. Pruet: I may not need anything, Judge,—our stipulation may cover everything we want.

And I have that stipulation prepared and am ready to sign it. It provides that the Cities Service Gas Company will connect these wells, without prejudice to the final determination of measurement and price, the issues in this case, and that if the price is changed here we will make the correction later.

Reporter's Note: Mr. Pruet hands to Judge Cullison the document, which bears the title and number of this cause and is entitled "Stipulation", and, after examination by Judge Cullison,——

Judge Cullison: Sign it up and I'll sign it.

Whereupon Mr. Pruet and Judge Cullison sign said stipulation.

Chairman Bond: The Commission will respect the agreement of the parties.

Reporter's Note: A five-minute recess was had, after which the Commission being in session as heretofore stated, the hearing was resumed, as follows:

[fol. 401] M. L. Mayfield, recalled for cross-examination, further testified as follows:

Cross-examination.

By Judge Cullison:

Q. Mr. Mayfield, in your direct examination you read a considerable part of your testimony,—do you have the paper from which you read?

A. Yes, I have it.

Q. Would you please loan it to us during cross-examination?

Mr. Pruet: If the Commission please, that's the private property of the witness,—he has testified and that's all that's necessary. We haven't introduced that statement.

Judge Cullison: He said he read from it.

Chairman Bond: You are entitled to any part of the statement he read from, Judge.

The Witness: When I put that table on the board I read from the table wherein I compared the value of fuels.

Mr. Pruet: What par*d* did you read from in your testimony, Mr. Mayfield?

The Witness: I read from this table which I have here, which is a comparison of the various types of fuels. (Indicating a portion of the statement in question.)

Judge Cullison: Among other things he has drastically changed what he read the other day, and there is a rule of law which says that one party may not introduce part of a document and conceal the remainder of it.

[fol. 402] Chairman Bond: That isn't such a document, Judge. That is only a private record that he *he* used in testifying and you are entitled only to that part of it he used.

Judge Cullison: Let me call your attention to a rule of law which provides that when they use a document and introduce only part of it the other party is entitled to all of it.

Q. Mr. Mayfield, are you willing to let us have it an hour or two, here in this room?

A. Mr. Pruet: If the Commission please,—it isn't a question of whether he is willing or not. I am objecting to it.

Chairman Bond: The Commission has ruled.

Judge Cullison: May I look at it?

Chairman Bond: You are entitled to look at the part he read.

The Witness: Here is a transcript of my previous testimony.

Judge Cullison: Oh, we have that. We want what he read from. Does the court hold that he can read from something and we can't have it?

Chairman Bond: No, the court held that what he read from you are entitled to have, but what he didn't read from is his private property or record and nobody is entitled to that unless it might be the people who hire him.

Judge Cullison: Now, I observe they are mutilating the document from which he read.

[fol. 403] Mr. Pruet: We are giving you just what the Commission has ruled you should have and we are not going to give you the rest unless the Commission orders us to give it to you.

Chairman Bond: The Commission has ruled that you are not entitled to go into the man's private record unless you show good cause.

Judge Cullison: To which ruling we except.

Chairman Bond: The Commission has ruled that you should give him any portion of that document which he has read into the testimony.

Mr. Pruet:

Q. Mr. Mayfield, I hand you Exhibit 53, so marked for identification, and ask you to state what it is.

A. That is a table I prepared showing the relative values of various types of fuel, including natural gas, and this table was used, on the board, and I read from my notes in putting this table on the board.

Q. Did you read from anything else?

A. No, I followed the outline.

Mr. Pruet: Here it is,—Exhibit 53.

Judge Cullison: That isn't what we want.

Questions by Judge Cullison: That isn't all you read from, is it?

A. Well, I read part of my outline.

Q. All right, on page 4, of Take 8, on May 8th, the record has me saying, "I observe the gentlemen is reading the [fol. 404] statement from the witness stand,—I have no objection to his looking at the paper and refreshing his memory but I think that the statements should be independent from the paper,—independent of the paper, and from memory. I do object to his reading. Now, what immediately

preceded that objection was this, wasn't it, Mr. Mayfield,—I'll read it (reading) Using gas at ten cents per MCF a forty fold increase in value may be achieved due to this manufacturing conversion. The thermal cracking of hydro carbon gases by regenerative or tubular methods is now being rigorously investigated and tubular cracking of the heavier hydrocarbons is being practiced commercially today. The thermal method of cracking natural gas into its component parts, that is, carbon and hydrogen, is of great practical importance and today such procedures provide us with enormous quantities of carbon black and by-product hydrogen which is of value as a chemical raw material. The catalytic decomposition of dry natural gas is now being investigated in pilot plant operations and may soon become of practical importance in metallurgical operations. The nitration of natural gas components, such as methane, ethane and propane, in the vapor phase with nitric acid is an accomplished fact and these nitro derivatives, such as nitro-methane, may prove to be a foundation of an organic chemical industry which some day may rival the coal tar derivatives which originated in the first world war. The halogenation of natural gas may be defined as the introduction of any member of the halogen family such as chlorine, bromine and [fol. 405] iodine into the hydrocarbon molecule with the aid of catalyst, heat or photosyntheses, to obtain solvents, refrigerants and anaesthetics. Some of these products are methyl bromide, methyl chloride, chloroform and carbon tetrachloride." At that juncture I made the objection that you were reading,—were you reading?

A. I was merely following my article that I had written, yes.

Q. Would it deviate in one word?

A. It might. I would have to check it to see.

Judge Cullison: Now, he says he read it, and they have not given us the article that he read.

Mr. Pruet: Judge, he says he doesn't have any objection to letting you have it. It's the easiest way to solve the problem.

[fol. 406] Chairman Bond: The Court had this question in mind, if there is a descreptency between the article he read from and the Court Reporters notes as they have it, the Counsel is entitled to ask about that, if it is some private record then——

A. Here is the only thing. This article is more comprehensive than the amount of testimony in the record. I followed an outline in considerable detail, certain parts may be exact. If you really want it I would have to go through and select the parts that I left out, it wasn't word for word.

Mr. Cullison: Will you give us the article, if you will that will help.

Mr. Pruet: I understand that you are willing to let them have it?

A. Sure I am willing to let them have it and will.

Mr. Cullison: In addition, you read from——

Chairman Bond: Just a moment, the Commission wants some information, how old is that article, when was it prepared?

A. It was prepared about a week before I came up here, it is my outline and work papers, I spent ten days to two weeks on it.

Mr. Cullison: In addition, you have read some from a tract of the Bureau of Mines?

[fol. 407] A. I didn't read from it, I merely gave you a chart from that circular.

Mr. Cullison: You gave it to us?

A. Yes sir, its an exhibit.

Mr. Cullison: If I remember correctly, it was a typical Bureau of Mines circular, like they put out.

A. It was an "Information Circular."

Mr. Cullison: We object to his testifying from that circular.

Earl Pruet: Now Judge Cullison, as a matter of fact you read this thing that Mr. Mayfield sent up here to the Reporters to use.

A. I had to re-write it and submit it to the reporters, because I only had my notes, and put it together.

Floyd Green: Its identified as Exhibit 32.

Q. It is typical—as issued from the United States Bureau of Mines?

Chairman Bond: If you desire, you may eliminate any part of that. That is a question of public record. The only thing the Commission don't want to establish the custom of taking a man's private records.

Mr. Cullison: I want to go to the place in his testimony to identify it.

A. Its Page 7, Take 8 in the middle of the page, you will notice that it is shown as to the identification in the corner of the exhibit though.

[fol. 408] Floyd Green: 1C 7108?

A. Right.

Floyd Green: Is that the exhibit that you were testifying from?

A. No sir, I merely submitted it and started to say that it was prepared from the information circular.

Chairman Bond: It is my recollection that they offered the measurement as offered by the Bureau of Mines and you objected to it and the Commission overruled your objection. That it could be considered by the Commission as a measurement used by the Bureau of Mines.

Mr. Cullison: That is correct, that is what I find here too, but I thought he had a pamphlet from the Bureau of Mines. Now back to the witness, did I understand that you finished your schooling in 1933?

A. I graduated in 1931 and took graduate work in 1932 and 1933.

Q. Did you finish your schooling in 1933?

A. Yes sir.

Q. Then you were employed by Slick Oil Company?

A. Slick Urshell.

Q. Tom Slick, employed in the oil production department?

A. That is correct I was employed in the production department.

Q. Then you worked for Empire Oil and Refining Company as a Trainee Engineer to start with and continued for how long?

[fol. 409] A. That was about six and a half years Judge Cullison.

Q. And that business was predominently oil wasn't it?

A. Yes sir.

Q. Then you worked for the Cotton Valley Operators Committee in the Unization operation concerning recycling, is that right?

A. That is correct.

Q. That was for the production of oil?

A. No sir.

Q. Weren't you recycling to increase the production of oil?

A. No sir.

Q. What was that recycling for?

A. For the recovery of condensity and fractionation into various components.

Q. Recycling is different from repressuring?

A. Yes sir.

Q. Then what did you do, when you did quit the Empire?

A. I believe in 1940.

Q. Then in February 1942 you quit the Cotton Valley Operators Committee?

A. Yes sir.

Q. Then you went with the Petroleum Coordinator in Houston District Number Three as the Assistant District Director, is that right?

A. Yes sir, of the Natural gas and gasoline division.

[fol. 410] Q. And among other states, that district included Texas but did not include Oklahoma?

A. No sir.

Q. And did include Texas, and didn't include Oklahoma is that right?

A. That is correct.

Q. Now you were there from 1942 to 1944 in that capacity and changed to the work of Technical Advisor and Engineer for that same District, District Number three?

A. Yes sir, for the Industry Committee for that district.

Q. For the industry?

A. Yes.

Q. And then about one year ago you started out on your own as an Independent Consultant?

A. Yes sir.

Q. And your office in Houston?

A. Yes sir.

Q. When were you employed by the Peerless to make this investigation of the Hugoton, Texas County, field?

A. Well let's see, April.

Q. April?

A. Yes sir.

Q. Did you go into the field?

[fol. 411] A. No sir.

Q. Did you *investage* the market price of gas that was being paid in that field?

A. I had become familiar with that previously, due to my investigations at Houston.

Q. Oh, I see. What were the prices being paid in Texas County at the time you made this investigation for Peerless?

A. I didn't investigate the price that Peerless was being paid, I understood that they were not being paid at all.

Q. I mean the prices paid in the field at the time you were investigating for Peerless?

A. I didn't investigate as to the price, my investigation wasn't on the price.

Q. Then you didn't propose to know what the market price of gas was or was at the time you made the investigation?

A. I have a general idea, but no contracts to look at. It ranged from about three cents what Phillips was offering up to 5.9 to the Kansas production.

Q. I confine it to Texas County.

A. I understand that you folks pay four cents, four and a half cents into the line.

Q. You found that to be the range of market price, from 3 to 4½ cents paid into the line?

[fol. 412] Yes, but that isn't necessarily the only market, I understood that Cabot gets five cents.

Q. That five cents is by virtue of the order of this Commission prescribing the payment of five cents as a condition of the manufacturing of Chanel Black?

A. I understood that was for furnace black.

Q. We contend that condition was to manufacture channel carbon black by the Cabot Carbon Company, using not to exceed thirty million's day of gas.

Earl Pruet: We object to that because the Cabot Order is not in the record as an exhibit, and the order shows for itself what it provides.

A. That is my understanding about it.

Q. And for the furnace black plants the price paid by virtue of a recent raise was four cents?

A. I don't know.

Q. Do you know that Panhandle Eastern was paying Southwestern something less than four cents for the gas that they bought in the Texas County Field?

A. No sir, I didn't know that.

Q. You didn't know what the present price of the Panhandle Western was paying to Southwestern Public Utility Corporation?

A. No sir, I don't know.

[fol. 413] Q. Did you ascertain what the price that was paid to the Republic by Cities Service Gas Company was in the field at that time?

A. No sir I did not.

Q. I believe you didn't purport to testify on the market price of gas in the Hugoton Field in the testimony in chief did you?

A. No sir.

Q. You didn't pose as having expert knowledge on that portion?

A. I have been generally advised what the prices are, I have not had the opportunity of seeing all of the contracts.

Q. You don't know about the Southwestern?

A. I gave you a range as to what they were 3.92 or 4.06, I don't know.

Q. You don't know what Southwestern was selling the gas to Panhandle Eastern?

Earl Pruet: If you please, he has answered that twice.

A. No I didn't know the contracts, or the final transaction.

Q. I think you stated in your testimony that the market price depends largely on demand and supply?

A. I did make such a statement.

Q. In the absence of unusual artificial barrier that has always been true and is true now?

A. I would not say so.

[fol. 414] Q. Demand and supply then doesn't work generally is that what you say as to the dictation of market price?

A. In regard to the Gas Business, not always, no sir.

Q. Yes gas business?

A. No sir.

Q. Generally does it?

A. Well a certain peculiarity that I know that you folks are familiar with in regard to the markets.

Q. Well I just asked generally?

A. Generally yes.

Q. That doctrine has been set forth and without serious change since Adam Smith wrote his Wealth of Nations, that has become the foundation and the father of production of economics isn't that true?

A. If you say so, I would assume that you know what you are talking about, I don't know.

Q. You are not qualified in economics?

A. No.

Q. You don't pretend to be?

A. On the comparative values of the fuels?

Q. A person posing as an expert in economics, a person who has not read Adam Smiths Wealth of the Nation——

[fol. 415] Earl Paget: I think that he has gone far enough, he did not claim to be an expert on economics.

Q. Economics affects generally the purchasing and selling of gas like it does other things, not conclusive to the same degree, is that right?

A. I would say that a lot of things, it does and would agree with you.

Q. You are not a chemist?

A. I don't have a degree in Chemistry, I have studied it.

Q. You don't hold yourself out in business as a Chemist?

A. No sir.

Q. In Mechanical Engineering generally speaking the pursuit that deals with construction generally and planning the industrial things and equipment?

A. Yes sir.

Q. And Petroleum Engineering, generally, is the pursuit of the problems involved in the building, planning and operation of the implements and paraphernalia used in the Petroleum Industry?

A. I think that is right, yes sir.

Q. A Mechanical Engineer or Petroleum Engineer as such doesn't generally make any research in Coal?

A. Not necessarily unless it involves a relative study.

[fol. 416] Q. As such it isn't in his line?

A. I think that a majority of the Mechanical Engineers are Engineers in the Coal Industry.

Q. As such is it not in his line?

A. Mechanical Engineers, yes sir it is.

Q. The study of coal?

A. Steam generation and electric power.

Q. Gas for fuel for lights, has been used for a long time hasn't it?

A. Yes sir.

Q. Considerably over one hundred years hasn't it?

A. Yes sir, I believe it has.

Q. One of the great London Gas Companies Chartered about 1812?

A. I don't know.

Q. Haven't you heard of them?

A. Earl Pruett: We object to hearsay, and he is not an expert.

Chairman Bond: You can ask if they used gas in the Chinese Empire Before Chirst.

A. I understand that they did use gas.

Q. How long have they had gas in London? I will put it that way.

A. I don't know.

[fol. 417] Q. How long have they in Baltimore,—how long have they used gas in Baltimore?

A. I imagine something like half a century.

Q. Isn't it a fact that it has been considerably more than 100 years?

A. In Baltimore?

Q. Yes.

A. I don't know.

Q. Now, in the making of that gas these companies have furnished light and fuel before natural gas came about, using coal as the raw material base, haven't they?

A. That's my understanding.

Q. And the equipment used in that practice exists today and is still used,—isn't that right?

A. Yes.

Q. That gas is essentially the same as the lower fraction of natural gas, isn't it,—that is, methane?

A. It has methane in it but not the same heating value.

Q. It has the same material in it that methane has?

A. Yes sir.

Q. Methane is the predominant hydro-carbon of natural gas, isn't it, in volume?

A. Yes, sir.

Q. And they make methane in these plants, made it in these plants, to supply light and heat in cities of this country, before natural gas came into being?

[fol. 418] A. That's correct.

Q. And in the making of methane they derive a great number of by-products that are suitable for the use of the people, don't they?

A. Yes, sir.

Q. Now, the equipment for the processing of these by-products and the utilizing of them is still in existence over the country and is being used generally, isn't it?

A. Yes, sir.

Q. Natural gas, in the Mid-Continent Field, didn't come about until about 1886, isn't that right?

A. Somewhere about that time.

Q. That discovery well in Kansas, which was at Iola, and is being used for the production and sale of medicinal salt water,—isn't that correct?

A. I don't know,—I have been in Iola and have heard about the well, but I don't know.

Q. And the production of it didn't start until around 1896, '97 and '98, did it?

A. You mean this particular well.

Q. No, I mean natural gas in the Mid-Continent Field.

A. Well, I think it went right along with the oil development.

Q. In '96, '97 and '98?

A. Yes, from there on, but principally later.

Q. Principally later?

[fol. 419] A. Yes, sir.

Q. How many products can be made out of coal,—not all consequent upon the use of coal, but——

A. Well, I could say a multitude of things can be made from it.

Q. Can you estimate the number?

A. Well, I don't know what the number might be, but certainly you can reduce coal to gas and go from there.

Q. But in the ramifications in the course of the by-products and the utilizing and observing of them a number of valuable articles were discovered and produced commercially, were marketed and are still marketed,—isn't that true?

A. That's correct. They are usually called the coal-tar derivatives.

Q. Now, from these coal-tar derivatives they get phenol or carbolic acid, don't they?

A. Yes.

Q. And from that they make different kinds of resins and plastics?

A. Yes, sir.

Q. And it is being done on a commercial scale in this country?

A. Yes, sir

Q. Is there a series called the aromatic series, a derivative of coal?

A. Yes.

Q. Most of those that smell belong to the aromatic series, [fol. 420] don't they?

A. Not necessarily,—sulphar has a smell——

Q. And the equipment necessary, all the paraphernalia necessary to make these numerous by-products, and in which to make them, have been built and are still in use, are still in existence and are being used generally over the country?

A. Yes, I thought we agreed on that a while ago.

Q. I'm talking now about the aromatic series.

A. I understand.

Q. A number of valuable medicines have been extracted from coal, haven't they?

A. Well, I don't know about their value,—some have been made.

Q. Well, the sulphides, anaesthetics, detergents,—I mean by that the cleansing, purifying kind?

A. Yes.

Q. Haven't they been made out of coal?

A. Yes, also out of gas and different things.

Q. By the use of a lot of equipment?

A. Yes, sir.

Q. And that sort of equipment is also being used to manufacture these valuable medicines, such as chloroform, the bromides, disinfectants and such as that?

A. Chloroform is not a disinfectant.

Q. Well, take creosote,—that's a disinfectant which may be made from coal tar?

[fol. 421] A. That's true.

Q. Now, you have said there are a number of articles in general use, which are made from coal,—isn't it a fact that considerably more than a hundred of very valuable

articles and medicines used in the arts and in the industries are made from the derivatives of coal and in consequence of the production of coal and the production of gas?

A. Yes, sir, that's true.

Q. Now, in your testimony as to the comparative prices for gas and for coal, you confined yourself, in your consideration of it, to your calculations concerning the b/u value of the coal, in the coal, and in the gas, didn't you?

A. I did make that comparison,—yes.

Q. Wouldn't you say to this Commission that never in our lifetime, any of us, will there be a scarcity of gas in this country?

A. I would hate to hazard a guess on that.

Q. There's coal enough to last more than 100 years, isn't there?

A. That's my understanding,—yes.

Q. And as long as they have coal they can have gas,—methane?

A. Yes.

Q. So the scarcity of gas needn't bother this generation, in this country?

A. (No answer)

Q. There is enough coal in this country, readily available and accessible, to supply all the population of this country [fol. 422] for more than a generation, with gas, if it is used for the production of gas?

A. That's correct.

Q. Then in the matter of the appropriate market price for gas you wouldn't consider the scarcity element, would you, at all?

A. Yes, I would.

Q. The scarcity element has an effect or a reflection upon or in the price of things, doesn't it? Generally?

A. Generally, yes.

Q. Diamonds are carbon, aren't they?

A. That's my understanding,—yes, sir.

Q. They can be made out of carbon, can they?

A. I understand so.

Q. As long as a substitute cannot be produced in commercial quantities it doesn't endanger the price of the thing for which it is a substitute, does it?

A. I don't know what you mean by "endanger".

Q. Well, I mean "lower it"?

A. It might even elevate it, raise it,—the price might go either way.

Q. But until that substitute is produced in commercial quantities it won't have any effect on the price, will it?

A. Ordinarily not,—we have the atomic bomb,—it may have a price,—that's all theory——

Q. The use of the atomic bomb for commercial purposes [fol. 423] is in the future, however, if at all, isn't it?

A. So I have read, yes, sir.

Q. I mean atomic energy?

A. Energy, yes.

Q. Now, this Fischer-Tropsch process, up to this time has not resulted in any commercial production of gasoline, has it?

A. In the United States, no,—in Europe, yes.

Q. So far as we know, in Germany it never was successful in a large measnre, unless when secrecy prevents us from observing it?

A. I would say it has been very successful in Germany.

Q. Now, that process,—when was it discovered?

A. I don't know the exact date. There was some investigation a number of years ago,—it never was developed on scale until about 1937 or 1938.

Q. Well, Germany was in war shortly after that, wasn't it?

A. Yes, sir.

Q. When do you say it was discovered?

A. I think the original discovery was in 1912.

Q. Isn't it a fact that it was in 1902 by Sabatier?

A. I think that was the original, but it was developed later by Fischer-Tropsch.

Q. Well, they knew about it there and they knew about it here since 1902 or shortly thereafter, didn't they?

A. I think the experiments——

Q. When was it Fischer-Tropsch began their experiments?

[fol. 424] A. I don't know,—I have some notes from which I could give you the answer, if you would like to have me refer to my notes.

Q. Well, I don't object to that.—I don't want you to do any reading.

A. (After referring to notes.) Well, the first reference I have as to that was as early as 1913. In 1925 Fischer and

Tropsch developed a cobalt, iron and nickel catalyst for the conversion of——

Q. That was 1925, begun in 1925?

A. That's when they did their work.

Q. Well, Mr. Keith, head of the Hydrocarbon Research, Inc., New York City says: "In 1925"—I beg your pardon, It's 1923,—did you say 1923?

A. 1925 is the reference I have. It was probably over a period of years that they developed it.

Q. Now there are a number of processes involved in the Fischer-Tropsch procedure, aren't there?

A. Yes.

Q. You mentioned in your testimony, "Fischer-Tropsch gas",—what do you mean by that, Mr. Mayfield?

A. Will you read it from the testimony, please, sir, so I can see how it was used?

Q. All right, in Take 8, page 6, you say, "Much publicity has been given to the use of both dry natural gas and the [fol. 425] heavier fractions of natural gas as a basic chemical raw material, however the figures which support its value as a chemical raw material are closely guarded by the chemical indusfry,"—is that correct?

A. That's correct.

Q. You are not a chemist, I believe you said?

A. I didn't get a degree in chemistry, but I have studied a lot of gas chemistry.

Q. But have they guarded that from you,—from whom are they guarding it?

A. Well, I think it is a fact that these secret processes in these industries are closely guarded.

Q. Do you mean they are concealed from the general public?

A. Well, they are under patents.

Q. Now, you say "Fischer-Tropsch gas at ten cents will produce a barrel of gasoline at 32 cents",—what is "Fischer-Tropsch gas" as you intended to use it?

A. I meant natural gas converted into gasoline and other hydrocarbon products, by use of the Fischer-Tropsch process, that's what I had in mind.

Q. Who are the leading exponents of the Fischer-Tropsch process in this country at this time?

A. Well, I don't know that I know who are the leading exponents but there has been a lot in the press about Mr.

Keith, who has been mentioned, in connection with the [fol. 426] Brownsville plant, also it is my understanding that the Hogoton, Kansas Field is to have such a plant and that the Hogoton operations are supported by several companies,—several oil and gas companies.

Q. Well, aren't there two companies that are really outstanding exponents of the production of gasoline from natural gas?

A. I would say there are two, yes.

Q. Who are they?

A. I would say the Standard Development Company and the Phillips Petroleum Company,—the Research Department of the New Jersey Company and the Phillips Petroleum Company.

Q. I mean the companies who are promoting interest in this.

A. Well, I don't know whether you are referring to Mr. Keith, or not,—he is acknowledged to be one of the leaders.

Q. All right, that's what I'm getting at,—he is one of the foremost exponents of the attempt to put this process into production commercially,—is that right?

A. Yes.

Q. Now, who is another person or company that you would regard as the foremost exponent of the attempt to produce gasoline from natural gas, in this country?

A. Judge, I wouldn't have any way of ranking them,—as to who would be first or foremost. There are several,—I would say the Kellogg——

Q. That's it,—isn't the Kellogg Company the other one who is urging this procedure to be put into effect?

[fol. 427] A. As to its commercial possibilities,—yes, they have been.

Q. Does the Kellogg Company operate under the name of Kellogg.

A. I believe it's the synthene and the hydrocarbon——

Q. Can you name the two outstanding authorities on this subject?

A. I would say it would include the Standard Development Company But I don't know who is outstanding, who is leading.

Q. Now, Mr. Keith wrote an article in the June, 1946 "GAS", being the name of a magazine, concerning this Fischer-Tropsch process,—you are the man who injected

that into this case,—isn't that right,—he wrote the article?

A. Yes, I assume he did,—you have the magazine there. I have not read it.

[fol. 428] Q. Isn't it a fact that Mr. Keith has gone on record as saying that if he takes gas at five cents he can produce gasoline at five and a quarter or five and a half cents per gallon from the gas if the gas is carefully selected from raw material?

A. Yes sir that is his general statement.

Q. Now has his company for a long time ever been connected with what you call the Pilot Plant at Olean, New York?

A. That is correct.

Q. And they have produced as much as ten barrels of gas a day in that plant?

A. If you say so.

Q. Has any body else ever produced more at such a plant in this country up to this time?

A. I don't know the quantities produced.

Q. If you can name a higher amount than ten barrels a day by hydro research, name it?

A. I can't.

Q. To your knowledge not more than ten barrels a day has ever been produced by that process in this country?

A. I can't agree on ten barrels, it has been made in such quantities that it is, they feel that its economically feasable.

Q. Now this article that I have called your attention to, in this magazine where Mr. Keith says that he had produced ten barrels per day in his Pilot Plant at Olean, [fol. 429] New York, did you ever hear of anybody that ever produced more than ten barrels a day in this country, by the Fischer-Tropsch process and if you do name them, tell us where it was produced?

A. I don't know.

Q. To your knowledge then this is the only Pilot Plant that has produced that much gasoline per day, is that right?

A. Yes.

Q. Alright——

A. I would like to add that there has been other research and I don't think that the work of the Pilot Plant has been made public, and its possible that other plants have produced more, that is my opinion.

Q. Mr. Keith or his company, Hydrocarbon Research, Inc., is the only company to this time that has induced the industry to invest money to build a commercial plant, is that right?

A. As far as I know in this country, we will leave Germany off.

Q. Now in his discussion of this he says that the gas used will be well selected gas, what does he mean by that?

A. Judge, will you read the rest of the article there and see what he says, I would assume it to mean, not having the benefit of the article, that he would try to obtain natural gas which is free of inerts such as nitrogen and sulphur. [fol. 430] Q. Isn't it a fact that he and the other authorities discussing this, says that the appropriate place for the Fischer-Tropsch plants are in connection with refineries and where the rich gas is available?

A. It might be appropriate to the extent that there would be some reduction in the industrial investment, it would not have to be done there.

Q. It would not necessarily have to be done there, but don't they generally recommend those places where they can reach gas or distress gas, where it is available?

A. I don't know what you mean by distress gas.

Q. I mean that it is being vented or popped or not being used by the producer.

A. It might be some incentive.

Q. That is the natural thing?

A. Adequate reserves and supplies.

Q They also contend as a condition that it might be near a good water supply?

A. I think that would be conditions not pertinent to the gas but the transportation. Most refineries are located where they have good transportation.

Q. I think you are right. Now Mr. Paul Ryan has written an article in the Oil and Gas Journal of March 31, 1945, on the Fischer-Tropsch process, are you familiar with Mr. Ryan, do you know him?

[fol. 431] A. I have read some — his articles, yes sir.

Q. Is he considered as an authority on this Chemical treatment of gas?

A. I really don't know sir.

Q. He says in his article mentioned by me, "As an answer to the wartime cries of shortage of oil this Synthol

process will produce motor gasoline (75 clear octane CFR-M) for approximately 5 cents per gallon (including 10 per cent depreciation) from natural gas valued at 5 cents per 1000 cu. ft." is that about correct?

A. You asked me if the article is correct?

Q. The statement I read.

A. I imagine it would correlate with Mr. Keiths idea.

Q. You don't say as to the correctness of the article?

A. No.

Q. You think this article is approximately correct?

A. That is what I have read and the information is about the same.

Q. If you thought that it wasn't true——

Earl Pruet: I object to that as he has asked him six times.

Q. If I thought I had a direct answer——

A. What do you want me to answer?

Q. Is that right?

A. Yes.

[fol. 432] Q. Now he says that "The plant should be located on water to achieve losest-cost transportation for both kinds of products—hydrocarbons and chemical compounds"?

A. Yes.

Q. "Location on the Gulf Coast, providing water transportation to the industries of the East Coast and to the upper Mississippi Valley, would be quite advantageous", would that be?

A. Yes sir, it could be just as well to locate at Chicago or some place else.

Q. I am reading now, "Continued satisfactory operation of a Synthol plant, requiring large volumes of natural gas, would necessitate the location contiguous to a presently operating or newly built oil refinery to handle the large quantities of oil produced under these gas-oil ratios." Regimented with the fact that the weighted gas isn't regimented by retable taking orders of the Texas Commission, etc?

A. Read that again Judge, I don't quite follow you.

Q. Alright, I will read it again, and a little more in detail. "Undoubtedly, postwar conservation regulations of the Texas Railroad Commission, and of other states, will enforce gas-oil ratios. Continued satisfactory operation of a Synthol plant, requiring large volumes of natural

gas, would necessitate the location contiguous to a presently operating or newly built oil refinery to handle the large quantities of oil produced under these gas-oil [fol. 433] ratios." Do you agree that that is advisable?

A. No sir I don't think that is correct. It might occur but I would not think so.

Q. Again reading from this article, "The plant should be operated in conjunction with a petroleum refinery to assure constant availability of skilled technical personnel for general supervision, and for joint utilization of existing refining and distributing facilities." Do you agree with that statement?

A. Not necessarily.

Q. Not necessarily?

A. That might be one of the conditions, but other conditions could previal.

Q. It might be correct in some instances and others it might not?

A. That is what I mean, yes sir.

Q. Reading again, he says, "This process can have a present appeal to those companies, which have adequate gas reserves located close to oil refineries, contiguous to economical transportation and whose managements are realistically mindful of the economic problems, not only of manufacturing chemical compounds but also of their profitable distribution." Do you agree with that?

A. Well I would like to make this statement the Hydrocal plant is meeting conditions that all of the Commercial Plants would not have to meet, as he has outlined.

[fol. 434] Q. So you say that they don't have to be in accordance with that?

A. I would say with some it could and it could be with all.

Q. But the most advantage would result, would you agree or not agree with that?

A. I think that the statement in a general way is alright.

Q. Mr. Mayfield, about what portion of the entire production and use of natural gas is used by the Industry for Chemical Manufacture or processes?

A. When you say Chemical, would you include synthetic rubber and some of the Petroleum Industry uses or would you confine it to the Alcohols and such items?

Q. I have in mind a statement by Mr. Watson, Society of Manufacturers Chemical Association, to this effect as reported in the Wichita Beacon, June 1946, and said in the

Course of the Federal Power Commission Investigation on cross examination Mr. Watson said, "Only a small percent of the gas produced was used for chemical purposes and what was used was selected carefully, do you agree with that?

A. That is a good statement.

Q. In the same discussion Mr. Watson said, "It has been brought out at previous hearing that less than one percent natural gas annually is used for these chemical purposes."

[fol. 435] A. That is correct, about one percent for straight chemicals but that doesn't certify the volume of butane and propane for liquid hydrocarbon manufacture.

Q. But it does reflect all of the gasoline made out of natural gas?

A. No sir.

Q. There is only ten barrels a day being made at this time?

A. I would not classify that as a chemical.

Q. Alright. Now I believe you said you were not an expert in economics but never the less won't you say that the volume of the one percent producing chemicals in this country would not dominate the price against the ninty-one percent used for fuel?

A. That is true.

Q. Then the tail couldn't wag the dog then could he?

A. No.

Q. Are you acquainted with Chemical Engineering, concerning engineering in New York City, A Chemical Engineer there by the name of Benjamine Miller?

A. Yes sir, I know him.

Q. He is a pretty good authority on Chemical processes?

A. Yes sir.

Q. He is pretty familiar with natural gas and all of its problems?

A. Yes I think he worked for Cities Service Gas Company.

[fol. 436] Q. He is a good authority?

A. I think he would be yes sir.

Q. You don't mean to say that he is working for us now?

A. He was retained by you when I was in New York, I know him.

Q. You and he were both there working for companies?

A. He had a better deal than I had, he was a consultant.

Q. In this Federal Power Commission Hearing, on the

possibilities of gas and the use of gas—appropriate use, its possible effect on the natural gas companies, he testified and made some statements about this Fischer-Tropsch project of extracting gasoline from natural gas, didn't he testify to that?

A. Yes sir, I think he made some reference to it, but I think the main part of his testimony was on the Am-onia plant. I understood that he occupied about three days up here, he and a Kansas City Chemist.

Q. I have a record of it and he's an interesting talker, now he says, "Now it takes ideally, I said before, nearly 7,000 cubic feet of methane to produce a barrel of gasoline as a practical matter considering all the factors involved, it is probably going to take somewhere around 10,000 to 11,000 cubic feet of methane per barrel and something less than three times that amount of synthesis gas, that is about 30,000 cubic feet of synthesis gas per barrel, which would mean that it would cost just to produce the [fol. 437] synthesis gas alone, from $750 to $1300 per barrel of daily capacity." is that approximately correct or not?

A. That conforms to the figures I have seen published, yes sir. I haven't seen the investment figures except as to the finished product.

Q. It would be from 38 to 60 dollars per 30,000 cubic feet of synthetic gas capacity which would mean over one thousand dollars per barrel every day, of daily capacity, just for synthesis gas production and ranging up to nearly two thousand, is that approximately correct?

A. I don't know, I do know that the Aviation gasoline program during the war cost about two thousand dollars daily, per barrel which would be comparable.

Q. This being a statement that you have otherwise heard, then its probably true?

A. It sounds reasonable, yes sir.

Q. It goes on and says, "The next stage, that is, the synthesis itself. For that the only commercial experience, of course is, the German experience, and considering the type of equipment that I have already described it should be fairly obvious that that would be very expensive, so expensive, in fact, that if we were to consider that we had to use that type of equipment we probably wouldn't give the Fischer synthesis any more attention, at the present time or for perhaps not for a good many years to come."

[fol. 438] A. I think that conflicts with Mr. Keith's statement.

Q. Do you think that is correct, that we could use the German method commercially?

A. I think we are improving it so it would be.

Q. On reconsideration, would you consider that approximately a true statement, if we had to use that type of equipment?

A. Starting from coal and to be commercial, we would have to have about $1.50 per ton for comparable gas at ten cents per thousand.

Q. They said that type of equipment, I think that he is referring to tubular plan of equipment whereby the catalyst is packed in a ring around an infertube and the catalyst then operates in the field as it passes through that packed cobalt or whatever other catalyst they are using. Now would that plan of equipment, would it be commercial in this country?

A. I think that is what they intended to do.

Q. He further says, "Recent figures have been given,—more gossip than anything else,—which indicat- that that goal of $2,200 per barrel is either in sight or perhaps has already been reached, or, if you are very optimistic, that has been passed, but on the basis of all of the things that I have been able to find out, it is my opinion at the present time that unless something radically new has come about, the investment figure given by Mr. Russell before the O'Mahoney Committee of $2,200 per barrel of daily ca-[fol. 439] pacity is still a pretty good target at which to shoot and I doubt whether right now anyone would want to have the responsibility of building a plant for even that figure." do you agree with that?

A. I think it is bound to be alright or the people that put the fourteen million dollars into it wouldn't have put it in.

Q. They didn't hope for facts but they are experimenting for the first time.

A. You mentioned that the Pilot operation was successful for a number of years.

Q. I said for ten barrels per day.

A. Whatever volume it was.

Q. He says further, "Well, 10,000 cubic feet of natural gas per barrel at the prices that have been talked about

here, that is in the neighborhood of four cents a thousand cubic feet; that is only 40 cents,—40 cents or, say, 1 cent per gallon of gasoline for the natural gas raw material." do you agree with that?

[fol. 440] A. I think that's a conservative price for the raw food.

Q. Now, the investment in this proposed Brownsville plant is approximately fifteen million dollars, isn't it?

A. Yes, sir.

Q. And the hoped-for plant production is 5800 barrels per day?

A. I think it is in that neighborhood.

Q. That's approximately $2586.00 per barrel——

A. That's only on the gasoline, Judge—there will be other products made,—there will be diesel oil, waxes——

Q. There would be what?

A. Diesel oil and waxes.

Q. Well, the investment, so far as the production of gasoline is considered, would be approximately $2586.00 per barrel of gasoline, if you consider only gasoline?

A. That's approximately correct, I believe.

Q. I have previously asked you about $2500 and $2200, and you said you preferred to take Mr. Keith's statement, —now I will ask you if you have read Mr. Keith's statement, as published in the June, 1946, GAS?

A. Yes, I think that's approximately what it would work out under——

Q. So, the Mr. Keith you choose to believe adds it up to about $2586.00 per barrel of gasoline, as the investment in the plant, considering only gasoline?

A. Yes, sir.

[fol. 441] Q. Now, what is the investment per barrel in refineries, in their cracking processes by which they produce gasoline,—approximately what is the investment per barrel?

A. I believe it will range from $1600 to $2000 per barrel, that would be for — plant, complete.

Q. I will ask you it it isn't a fact that they run around $750 investment,—from that to $1000 per barrel?

A. No, they'll run higher than that. That plant at Lake Charles cost about Eighty Thousand,—it's according to what you——

Q. Taking it for all purposes in the building of a refinery which does the cracking of the gas and produces gasoline.

A. I will say in the neighborhood of $2000 per barrel.

Q. Considering the statement of Mr. Miller, and you say you know him to be reliable and capable, (reading) "Now it takes ideally, I said before, nearly 7000 cubic feet of methane to produce a barrel of gasoline as a practical matter considering all the factors involved, it is probably going to take somewhere around 10,000 to 11,000 cubic feet of methane per barrel and something less than three times that amount of synthesis gas, that is, about 30,000 cubic feet of synthesis gas per barrel, which would mean that it would cost just to produce the synthesis gas alone, from $750 to $1300 per barrel of daily capacity."—is that approximately correct?

A. I don't know.

Q. You have studied these matters and you don't feel [fol. 442] disposed to dispute the correctness of that statement,—is that right?

A. I think Mr. Miller is competent and that at the time he gave that testimony it was probably good testimony, but, when the plant is completed subsequent to the time he gave the testimony I think the plant when completed will show that those figures may not be exactly accurate.

Q. He testified in September, 1945, about the details of things then in existence, and you are basing your testimony on what people propose to down at Brownsville,—on eggs that are not hatched yet,—isn't that correct?

A. No, I think the people who are hatching those eggs and have put their money up probably know what they are doing.

Q. Ninety percent of people in business fail, don't they?

A. I don't know.

Q. And grocery men and milliners go higher than that in percent of failures, don't they?

A. I don't know.—those people may fail and they may not.

Q. Commercially speaking, they may fail?

A. I don't know——

Mr. Pruet: If the Court pleases, about ninety per cent of this cross examination is in the field of conjecture and counsel could go on for six months reading from articles

and asking these questions, as he has been doing all day. I feel that this line of examination should be limited to some extent and when he has asked him a dozen different [fol. 443] questions from a dozen different authorities along this line there should be a limit. We could be here until cotton-picking time examining this one witness.

Judge Cullison: If the Court please, I think you will understand the position I am in. We have for three days listened to the testimony of this witness and that of Mr. Weidlein,—he didn't testify to anything that hurt,—with reference to Weidlein. Now, here is a man who qualifies as an expert and says that gas is worth ten cents per thousand cubic feet up there in the Field. Now, he has put him on and he has given some free and easy calculations,—just generalized over it, and he says, "It's worth ten cents." He says the sale of it at a lower price is economic waste. Now, some of that testimony is competent and pertinent and if you hang your opinion on it and say, "that proof is in here", and find against us and it will cost us millions of dollars worth,—millions of dollars, and he wants to choke me off because I have spent an hour or two trying to show that this man isn't qualified——

Chairman Bond: You may ask the witness any qualification question you may desire, but you are not to cross examine him on anything that has not been brought out in chief,—I don't know what counsel referred to, but——

Mr. Pruet: I think it is entirely immaterial what per cent of the people in business are failures,—most of them are failures,—most lawyers are failures,—most everybody [fol. 444] else is, when you measure it in terms of financial success.

Chairman Bond: Gentlemen, you may proceed,—confine yourself to his qualifications and to the testimony in chief.

Q. Isn't it a fact that in all classes of business there is a great proportion of failures?

Mr. Pruet: We object to that as——

Chairman Bond: Sustained, you should confine yourself to the issues here.

Judge Cullison: If the Court please, this is the only plant of the kind, and it hasn't been built yet——

Chairman Bond: What are you trying to show by this kind of question?

Judge Cullison: If you are not going to give any weight to this testimony I'll quit right now.

Chairman Bond: You may prove anything you are able to prove, connected with the issues in this case, but I don't care about the percentage of failures in the drug business and the grocery business or any other business.

Q. Now, Mr. Mayfield, you wouldn't say it was objectionable for Mr. Benjamin Miller to base his calculations about this kind of a plant from things that were in existence at the time he was testifying, would you?

A. I don't know what his calculations are.

Q. Well, I mean just generally.

[fol. 445] A. Generally.

Q. Now, with reference to your statement that you believe the German process could be efficiently operated here, I will confront you with this statement of the man you say is quite competent,— "——considering the type of equipment that I have already described it should be fairly obvious that that would be very expensive, so expensive, in fact, that if we were to consider that we had to use that type of equipment we probably wouldn't give the Fischer synthesis any more attention, at the present time or for perhaps not for a good many years to come." Did I ask you that question?

A. Yes, and I said I believed that would be a logical conclusion,—that the Americans are going to improve it so it will be economically feasible.

Q. Now, we have $2586.00 per barrel, by Mr. Keith,— a little cheaper than that by Mr. Miller. I would like to read you this statement of his calculations about that,— (reading) "But the investment of $2,200.00 per barrel of daily capacity, the fixed charges on that, cost of maintaining such a plant, the cost of labor to operate such a plant, even if we make the improvements that I am confident can be made, increase the size of the unit, cut down the labor cost—all of those things indicate that the final cost of the product is going to be very many times the cost of natural gas which we have been talking about and necessarily so because the gasoline produced from crude oil fraction is—

[fol. 446] $2 a barrel is a good round figure so if we can assume that 40 cents to 60 cents worth of gas is all the raw material required, it can be seen that there must be something else that is going to cost a lot of money or gasoline

would be made from gas before now." What have you to say about that?

A. Well, the only statement I have to make is, despite his opinion they are going to build the plant and have set up fifteen million dollars to do so.

Q. Again, on the same subject, the Fischer-Tropsch synthesis method, he says, (reading) "the point is if the situation with regard to oil is that with our own production and with the production of the rest of the world the price of oil remains at or near its present level, it will require rather profound improvements in the Fischer synthesis above what has already been made public to make the Fischer synthesis commercially attractive." what do you say about that?

[fol. 447] A. I think that is a reasonable statement.

Q. Reading further down on the same page, "unless something which has as yet not been hinted at comes up, the Fischer synthesis does not look attractive so long as oil is available in reasonable quantities as it is now at or about its present price." that was February 21, 1945.

A. Did you ask that in the nature of a statement?

Q. What do you say about that in its competition with oil?

A. I think that is competing with oil at the moment.

Q. There is none that has been built?

A. Its going to be built. I think that its going into one of the most competitive avenues in the country.

Q. He says, "unless something which has as yet not been hinted at comes out, the Fischer synthesis does not look attractive so long as oil is available in reasonable quantities as it is now at or about its present price," what do you say about that competitive situation?

A. Well, I think that I would agree that as long as crude remains in the present state that Fischer-Tropsch—but there may be some question as to whether is can compete with crude at the present saying.

Q. That is about what he says.

A. There are a lot of other factors involved, I would not say that that is the controlling factor of it.

[fol. 448] Q. To be sure about it, do you not admit that something in order of one percent of the natural gas is presently being devoted to the manufacture of chemicals?

A. Yes, approximately one percent, it's estimated at approximately one percent of the total gas produced is repre-

sented by the amount of chemicals manufactured except for the butanes.

Q. And these are the heavier members of the Hydrocarbon series?

A. Not necessarily.

Q. Tell us about this prop*h*ane series, what portion are gasseous?

A. Well, we ordinarily think of them through the Heptanes, but it goes lower to the asphalts.

Q. At an ordinary temperature? I will ask you if the range of the gasses is not from CH_4 to C_5H_{12} pentane?

A. In my testimony I made a distinction from propanes and later propane methane as compared to butanes and heavier.

Q. Now if C_5 on to C_{15} are liquids?

A. Yes.

Q. And above those are solids?

A. The latter are heavier, those above are atmosphere.

Q. I don't believe you understand.—If C_5 H_{12} to C_{15} H_{32} are liquids—ar-n't they?

A. Ordinarily.

Q. Those above that last mentioned element are composition of solids?

[fol. 449] A. You say, what do I think of them as heavy component and down into the waxes?

Q. Above C_{15}.

A. C_{16} and heavier?

Q. Yes.

A. They all grade down into solids yes.

Q. Now they are all in the same series?

A. Yes sir Hydrocarbon series.

Q. And what percent of the gas in the Hugoton Field is methane?

A. I imagine it will come between eighty and eighty-five percent.

Q. How much ethane is that?

A. I have looked at some analysis given me. If you will give me a moment I will give you an analysis. I will say as a general rule about eighty percent methane. I will give you an analysis or two if you want it.

Q. Alright.

A. I have an analysis here from the Cities Service well in the Houghton Field which I took, I believe from the Federal Power Commission testimony.

Q. Testimony by us or someone else?

A. I don't recall, its from the transcript.

Q. By us I would not object to it.

A. I have some here from the Republic Wells.

[fol. 450] Q. Any well, but if you quote us, I want you to quote us.

A. This particular analysis I was going to read it, I think it might be alright, Republic Fitzgerald Number 1, Methane 82.44; Ethane 5.71, that is what you asked me for?

Q. What are the rest of the components?

A. Propane 3.55; Butane 1.42; Pentane plus .67; Nitrogen 6.21; I think that will add up to 100.

Q. Now to get gasoline in the old way in the strip plant, they will take out the propane and butane?

A. Yes sir, part of it is, about thirty percent propane and seventy percent butane.

Q. Now they make gasoline out of that through that process and it sells around 3½ cents a gallon doesn't it?

A. Yes the current FOB Breckenridge is 2¾ cents—in Hugoton it will be 3½ or 3¾ depending on the freight differential.

Q. Now there is a vast amount of that being made especially down where the heavier gas is produced?

A. Yes sir, approximately 310,000 barrels per day, natural gasoline and other light products are made.

Q. Now the Fischer-Tropsch process hopes to make it now for 5½ or 5½ against the price of natural gas for 2¾ and 3½, is that approximately correct?

A. If you want to make such a comparison.

Q. What do the refineries do when they crack the oil and get gasoline in the way of their sales price at the plant?

[fol. 451] A. Sales price at the plant?

Q. Yes.

A. Well that depends on the grade of gasoline being sold. I think everyone is familiar with the general refinery process. I think about 5¼ and range up to 6¾ depending on the octane number.

Q. Give the lower and upper range.

A. Where, about Gulf cost, it depends on the location.

Q. Yes.

A. I think there were 5½ for regular and 6¾ for premium.

Q. Is there any other range that is cheaper than that?

A. There is a third grade.
Q. What is that?
A. I don't know.
Q. Where is it sold?
A. Its sold along with the others.
Q. In the Gulf Coast?
A. Yes, most of the third grade is exported since the other countries would rather have the lower grade 70 octane.
Q. So your Fischer-Tropsch gas according to the most optimistic estimates will be produced at about the same price as the regular gasoline is now sold at these plants by the refineries?
A. I believe so, yes sir.
Q. And you said you didn't know what the lower grade of gas was at the refinery?
A. No I hav-n't looked at it recently.
[fol. 452] Q. It would be lower?
A. There is every differential in the two since there is lead in the gasoline. I think that the figure of Fischer-Tropsch doesn't reflect the later refinery process, it is adding lead and blending.
Q. Neither one will be reflected?
A. You are comparing a finished product with a raw product before it could be marketed you will add lead and blend.
Q. So that manufactured by the refinery at 5½¢ will you have an additional expense devoted to it before manufactured by the Fischer-Tropsch plant to render this suitable for market, is that right?
A. You say the refinery gasoline will have additional expense, I say that both will have to be leaded.
Q. I withdraw the question, I don't understand you.
Now you ask of the manufacutre of methanol and Am-onium Nitrate?
A. I didn't mention am-onium nitrate.
Q. Formald*a*hide, those plants for that production is only the heavier fractions of natural gas, beginning with propane don't they?
A. Its customary to use propane butane mixture, C_3 & C_4.
Q. Now those plants already are running over the country, we think two or three of them in the Mid-Continent area?

A. My understanding is that Cities Service has two plants and one at Bishop, owned by Celanese, Dow has one at Freeport and Monsanto has one at Texas City.

[fol. 453] . . . they are not all the same process but they have the same feed from the butane to the ethane fraction.

Q. The gas in the Hugoton doesn't have the fractions that they use in the industry except 3/100 of propane and 1/00 of the butane?

A. Whatever the figures are.

Q. That is a very fractional portion of the gas that is propane or above, is that correct?

A. We agree.

Q. For all practical commercial purposes you might say that there is a perfectly inconsiderable amount of those elements in that gas in the Hugoton field?

A. You have a tremendous reservoir and there is quite a volume in there.

Q. You will use all of the gas?

A. They hope that they will use it all.

Q. There will be about nine or ten trillion devoted to that.

Now come to the manufacture of am-onium nitrate out of gas and fertilizer utilizing it or modifications of this gas is used for that purpose already isn't it?

A. Yes sir.

Q. There is a nitrate plant at Pittsburg, Kansas, called the Spencer Chemical Company?

A. I am not familiar with that plant.

Q. They take commercially ten or fifteen million and it [fol. 454] peaks thirty million cubic feet of gas for that purpose.

A. I really don't know what they take.

Q. Now concerning the intrensic value of gas being ten cents in the Hougton Field, I will ask you if you don't know its a fact that we sell that to that plant at around ten cents?

A. I don't know it, no sir.

Q. Do you know how much it costs to transport gas?

A. I have seen some figures yes sir.

Q. In the Hougton field is several hundreds of miles for any considerable population?

A. Yes that is correct.

Q. Unless you build the plant there you will have to ship it a long ways to the plant and if you do build the plant

there you will have to ship the finished product which I think you said in your testimony was four times the bulk of the gas?

A. I believe I said volume I mean the finished price of the plastic as compared to the raw materials.

Q. Then the volume is something then, isn't it?

A. What I was referring to was plastic manufacturing.

Q. The fact is whether any one testified about it at all, there will be a large expense to get this gas to the center of population where the majority of the consumers will be whether it will be preparing the gas there or by building the plant out in the Hougton field and shipping the finished product from there?

A. I think that is correct.

[fol. 455] Q. And competing fuel price puts the ceiling on the price that we can get at all, that gas companies can get?

A. With certain limitations.

Q. An approximate ceiling?

A. This depends on the service.

Q. For the manufacture of ceramics where gas is?

A. Heat controls process.

Q. In the absence of unique or peculiar situations of that kind our ceiling is whatever substitutes all sell for?

A. I think so providing you don't have your rates fixed.

Q. These are direct sales I am talking about and they are not regulated?

A. Yes.

Q. You don't know whether we can get more than ten cents a thousand or not for the ten million a day we are selling Spencer at Pittsburg or not?

A. No.

Q. It might be that competition from coal might put the ceiling on, isn't that correct?

A. I don't know all the figures I have on coal shows that it is a great deal more than that.

Q. Do you think that the coal could undersell us?

A. No you are underselling coal.

Q. You don't say that we are selling our gas too cheap as a commercial matter?

[fol. 456] A. I don't know what your policies are.

Q. You have shown what the intrinsic value of gas will do through your testimony?

A. That is right.

Q. You have tried to designate and demonstrate it is an intrinsic value equal to other substances?

A. I have made comparisons.

Q. Intrinsic value means the worth within the thing that can convertably be gotten out of that thing, isn't that right?

A. Well I don't know.

Q. What do you mean by intrinsic value?

A. I don't believe I used the word "intrinsic".

Earl Pruet: He used the word "comparative on BTU basis".

A. I think your definition is pretty good though.

Q. Now the intrinsic and commercial value of the thing may differ widely?

A. Yes they often do.

Q. The intrinsic value of one dollar bill is nil but its worth one dollar?

A. Yes.

Q. The intrinsic value of a silver dollar is worth between 51 and 70 cents but the commercial value of this silver dollar is one dollar or 100 cents?

A. That is my understanding.

[fol. 457] Q. Now the intrinsic value of a ton of metal, say steel that was frozen during the war and was fifty-seven dollars a ton and assuming that there was used about sixty percent that was manufactured into watch springs, that would put it up around a million dollars or at least thousands of dollars?

A. I imagine more.

Q. One of the reasons why the intrinsic value is not always reflected in the commercial value is that the law of demand and supply came in and there isn't enough demand to take the aggregate in the substance?

A. That may be true.

[fol. 458] Q. To illustrate, if a ton of steel in watch springs would be worth five hundred thousand dollars it is very doubtful whether you could sell all of the watch springs made out of the ton of steel, at any one time?

A. I don't know, it would be a lot of watch springs, wouldn't it?

Q. So that demand and supply works on watch springs and on gas the same, but possibly not in the same degree,—isn't that right?

A. Not in the same degree but——

Q. But it works, doesn't it?

A. There has been some question at times,—if they have free competition I think it would work.

Q. The law of gravity and the law of demand and supply exert a constant pull or urge to the point where it will govern the price?

A. Within certain limitations.

Q. If supply and demand are equal it will dictate the price,—isn't that right?

A. In free enterprise I think it would,—yes.

Q. Now, money goes to the place of higher reward, isn't that right?

A. Yes, usually.

Q. If money draws a higher reward in England the money would ultimately go there, wouldn't it? And, despite that fact, since 1902, when Sabatier developed this process, there wasn't any money spent on that, was there?

[fol. 459] A. Whose money?

Q. Anybody's?

A. Yes, there was a lot of money spent on it.

Q. I mean in France,—they didn't do any development work, at all?

A. No, I think not.

Q. It rocked along then for 22 years or so, when the German nation, a very rich nation, began to speculate on using it when Fischer-Tropsch begun to stir the thing up as a commercial proposition in that country of Germany,—is that right?

A. I think that's right.

Q. Before this time they had acted under higher pressure and these men discovered that a lower pressure would work?

A. I think their main development was on the catalyst.

Q. All right, now, this capable man, Mr. Miller, dealing with the question of a catalyst,—cobalt is probably the best catalyst, isn't it?

A. I think it has been found that iron and cobalt——

Q. The cobalt is the principal ingredient and cobalt is classified among the semi-precious metals, isn't it?

Mr. Pruet: Object to that?

Chairman Bond: Overruled, exceptions allowed. Proceed.

A. I think it is relatively expensive,—yes.

Q. I will ask you if it isn't classified among the semi-precious stones, or metals?

[fol. 460] A. I think you usually think of it as a stone, but it can be in an impure state.

Q. In the year 1923 when Fischer-Tropsch discovered better catalysts the matter was rather well publicized everywhere until World War Two when secrecy was imposed,—isn't that true?

A. I think that's true,—there was an inadequate supply of motor fuel or fear of a shortage——

Q. During the war they feared a shortage, I don't know whether there was one, but this work was stimulated by that fear?

A. That's correct.

Q. And that stimulation hasn't died down?

A. No, I think it has been increased.

Q. And since, that time in the World War when there was a critical need for fuel, such as Fischer-Tropsch gas, none was produced commercially?

A. In this country?

Q. Yes.

A. None that I know of.

Q. Now, in your statement as to the work of Dr. Schoch,—he's a school teacher, isn't he?

A. He is Dean of the Engineering School of the University of Texas.

Q. I believe that's S-C-h-o-c-h?

A. You're right.

[fol. 461] Q. Now, as to the making acetylene out of natural gas, Dr. Schoch loudly publicized his process long before the critical need for acetylene in welding operations in World War Two developed, didn't he?

A. Yes.

Q. He tried to get the Army to take up the matter of making acetylene out of natural gas, but wholly failed, didn't he?

A. Yes,—you mean during the World War?

Q. Yes.

A. Yes, I think that's right.

Q. And so far there has been no production of acetylene gas through Dr. Schoch's process?

A. That's right, but the Germans do have an electric arc process and it did work.

Q. You think whatever the Germans can do we can do?

A. I think we can improve on it,—we always have.

Q. But that's all in the future,—that egg hasn't hatched, has it?

A. Well,——

Q. Well, they're not making it, are they,—commercially?

A. No.

Q. That's what I mean by the eggs not being hatched,—I don't mean to deride Dr. Schoch, or anyone else. Now, when we come to coal, you say, considering the BTU or heating power, alone, gas for industrial purposes is not [fol. 462] selling on parity with coal?

A. No, I made the statement that, compared with the BTU of a ton of coal,—compared with the BTU content, comparing natural gas with coal, natural gas at the well-head was below parity with coal, as to price.

Q. You think I misunderstood what you intended to say?

A. I don't know what you understood, how you understood it, but what I did say was that at the coal prices shown yesterday and at the comparative BTU value of natural gas and the BTU value of the coal, the gas should be worth twenty to twenty-five cents,—in that range. If you take it on the crude oil price in Oklahoma the gas should be worth twenty cents.

Q. Now, proceeding identically, but conversely, you would prove that coal was selling too cheap by comparing it with gas,—pardon me, coal was selling too high, this comparison would prove that coal was selling too high and not that gas was selling too cheap?

A. Yes, you could.

Q. It depends on which you take as the absolute fact,—whether it is that gas is too cheap or coal is too high, doesn't it?

A. You better bring fuel oil in there,—it is a factor, too.

Q. I'll do that,—but that's true, isn't it?

A. Yes.

Q. So that doesn't show anything but parity prices and comparison of those prices——

[fol. 463] A. I think if shows as long as the consumption of gas is increasing it must be taking up some of the load of coal, fuel oil, or lignite, or something else.

Q. Everything being equal, you mean? But it doesn't show absolute value or price, does it?

A. Well, it shows the relationship, sir.

Q. Now, the same thing is true of oil,—if you proceed by identical reasoning, but conversely, you would prove that oil is selling too low, wouldn't you?

A. I think most people in the oil business feel it, too.

Q. I say you would take that same process of reasoning, only conversely,—conversely applied and prove that oil was selling too low,—there is no argument about that, is there?

A. No, I don't believe there is.

Q. Now, if we should pay ten cents at the wellhead it would be impossible to make the sale to Spencer Chemical Company at ten cents, around three hundred miles away, wouldn't it?

A. That might be a little difficult.

Q. You say you are familiar with the matter of cost of transportation of gas,—is that right?

A. Yes, I have some ideas. I don't have definite figures.

Q. Did you ever build a gas pipeline?

A. Not a large one.

Q. That's the kind they're building nowadays, isn't it?

A. Yes, they are more efficient that way.

[fol. 464] Q. Do you know the old thumb rule for the construction of pipeline?

A. Of cost?

Q. Yes.

A. It doesn't apply any longer,—it used to be $1000.00 per inch per mile.

Q. You think that's not quite accurate now?

A. I know it isn't.

Q. But you do know it cost us around fifteen million dollars to build that fifteen-inch line from Hugoton to our compressor station at Blackwell?

A. I have read that it did, yes.

Q. Do you think it did?

A. Yes.

Q. Something on that order?

A. Yes.

Q. Are you able to develop what you consider to be the ordinary cost of carriage of gas?

A. I don't have it figured out,—it depends on many factors.

Q. The truth is a system that is rambling across creeks, gullies, roads, through rock,—a web kind of system, would be harder to operate and more expensive than a gun-barrel

system shooting the gas into a big line and into the centers where it is used?

A. Yes, I would think so.

Q. You know Cities Service has a web-like system through [fol. 465] Eastern Kansas, Northern Oklahoma and Western Missouri, didn't you?

A. Yes, you have such a system in that area.

Q. So, it would be impossible, even if you knew the ordinary cost of carriage, to apply it to a system like ours, wouldn't it?

A. I think it could be determined, but it would take a lot of figuring.

Q. And it would be more expensive than the simple, single, gun-barrel line, wouldn't it?

A. Yes.

Q. I believe that Texas was in your district number three, when you were supervisor, exercising that authority in P.A.W.?

A. That's correct.

Q. Did you go over Texas, with reference to the oil and gas situation?

A. How do you mean?

Q. I believe you said you checked applications for the building of oil and gas,—for the building of gasoline plants?

A. I did in a few cases,—I didn't visit nearly all of them.

Q. Didn't the Government have an Army plant north of Amarillo?

A. Yes.

Q. Didn't you know we sold gas to them?

A. I didn't know who sold it,—I knew about it.

Q. Didn't you and don't you know we sold it to them at five cents.

A. I don't know.

[fol. 466] Q. You know we couldn't pay ten cents and sell it to them at five, don't you?

A. I don't think you're forced to sell,—don't think you are forced to do that.

Q. Assuming they sell a huge quantity of gas to Phillips, in the Field up there, for the Shidler Field, or Burbank Field, at seven and three-quarters cents, they couldn't carry on, considering the intrinsic value of gas to be as you testify, could they?

Mr. Pruett: We object to that,—there is not evidence in the record that they couldn't get more for it if they had to in order to make a profit.

(No ruling.)

A. I don't know whether you could or not.

Q. We couldn't carry on profitably, could we?

A. Well, it's entirely possible that they could pay, could afford to pay ten cents.

Q. You mean we would have to raise the price to ten cents or more?

A. I think that would be the logical thing.

Q. Now, then, assuking we sell from nine to eleven million cubic feet of gas, or a little less than that, to, or for, the smelter, at Blackwell, at seven cents, and we pay the price you testify is the intrinsic value of gas in the Guymon-Hugoton Field. You still say we have to compete with other fuels, don't you?

[fol. 467] A. Yes, and you might even lose some customers.

Q. Going to Kansas City, that's four or five hundred miles from Hugoton,—assuming that we sell four or five million of gas to the Kansas City Power & Light, at that place, for ten cents, more or less, per cubic foot, per thousand cubic feet,—that would have to be stopped, wouldn't it?

A. Well, I don't know,—that would probably rest with the policy of your Company.

Q. Well, we wouldn't have a profit.

A. Well, I don't know,—I have heard here that you are or were making excessive profits. It might be you are making more money than you are allowed to make under the Federal Power Commission rules.

Q. But, just as a sensible matter, we couldn't carry on such a course, could we?

A. No, but I have seen people give gas away.

Q. I wish you would name them.

A. Well, I've been looking for some of that, too.

Q. They don't do it any more?

A. No, they don't do it any more.

Q. Old man demand and supply?

A. That's right.

Q. Now, let's get to the producer's end and see whether or not that intrinsic value you have been talking about ought

to be considered by the Commission,—the ordinary lease out [fol. 468] there cost a dollar an acre,—isn't that right?

A. Well, I don't know.

(By Judge Cullison, addressing Mr. Pruet):

Q. Mr. Pruet, did you send for those figures?

Mr. Pruet: I don't think that has any bearing on this lawsuit. I stated that if I used that kind of evidence I would have a statement from the Company, here, to offer, and not be guessing at it. I don't think it is relevant or material to this lawsuit.

Judge Cullison: I thought you were going to deliver it to me.

* * * Reporter's Note: No ruling by the Commission.

Q. Assuming that a dollar an acre is paid for the lease on a section of land, and one well is drilled thereon, at a cost of around twenty thousand dollars, including the equipment, and at the limit or outlines of the section they deliver the gas to the pipeline or to the purchaser,—assuming that there was, as Mr. Ellison testified, as I remember, around twelve million feet per acre reserve for each acre out there, can you figure the profit that would go to the purchaser,—the producer, not the purchaser,—can you figure the profit to the producer, under that statement of facts?

Mr. Pruet: We object to the question, because it does not take into consideration——

Judge Cullison: Wait a minute,—assuming also the sale at the price of four cents, or four and a half cents where delivered,—can you figure that?

[fol. 469] Mr. Pruet: We object to that as incompetent, irrelevant and immaterial.

Chairman Bond: Overruled,—exceptions allowed.

A. May I have the question read.

Q. (Question read.)

A. I don't know what the operating cost would be.

[fol. 470] Q. You know operating cost of the well, he answered that I have to include the operating cost?

Earl Pruet: That is not proper cross examination.

Q. He introduced it to show what you ought to do out there, that is the buyers and the sellers which will render a reasonable profit to each?

Chairman Bond: The Commission is of the opinion that it took more of a rate hearing than a price fixing angle in the hearing, but the Commission will permit the testimony.

Q. I believe you suggested that the operating expense of the well was not included, didn't you?

A. I can take those factors that you have given there, I don't know whether they are correct or incorrect.

Q. In addition include the expense of the tending the well.

Earl Pruet: If the Commission pleases this involves a lot of elements, how long they have had the lease, how many rentals have been paid, the cost of drilling and administrative expense and everything else, if you are going into a rate hearing, the question is not complete, it is incompetent, irrelevant and immaterial.

Q. Include also a payment of rentals of one dollar per year for ten years, he said that he could do it.

[fol. 471] A. I said it could be done.

Earl Pruet: I think it is improper cross examination.

Chairman Bond: The Commission is inclined to think that it is a rate hearing but the Commission will permit the witness to answer it.

A. You want me to answer it?

Chairman Bond: Yes, if you can.

Q. What is the result of your computation, Mr. Mayfield?

A. I had to add a couple of factors that you didn't give but on the facts that you put forth there is a possible ultimate gas revenue before any charges $307,000 however it costs you $26,000 to start the earnings so using depletion of fifty years which might vary from thirty-five to fifty years you sell ½ million per day per well over a fifty year period which will give you a gross earning of $6,144 per year, after all royalty $5,380 to the operator. The operating cost of $50 per month per well which is $4,780 net to the operator per year, assuming you borrow the money at six percent you don't get any money until the first five years at which time the initial investment is paid out and from then on you will have forty-five years left for a net revenue to the operator of $215,000; discounting that back to present day worth which will be fifty years, I don't know what it will

be worth but if you got one dollar for fifty years from now, at most it would be worth five or ten percent of that or $20,000.

[fol. 472] Q. Do you carry interest along for forty-five years?

A. Just the first five years until the initial investment and everything is returned.

Q. Its velvet after that?

A. Yes, you have some profit after that.

Q. Your investment is paid out?

A. Yes.

Q. In five years?

A. Yes, sir, that is under the half million take.

Q. Half million take?

A. Yes, on the average of fifty years.

Q. Well, the take out there, assuming that they are in excess of one million feet a day, which I am informed that they are?

A. You will run out of gas before fifty years.

Q. What difference will that make?

A. It will speed up the payout but it won't make more than one or one and a half years difference.

Q. The gross is entirely the same?

A. Yes.

Q. But the net will be increased considerably?

A. The net will be increased whatever the discount factor.

Q. What about the rate of completion?

A. The rate of completion is the deciding and controlling factor. If you want it out in 35 years it will effect the fig-

[fol. 473] ures to some extent. It will take longer to get the ultimate profit.

Q. Now you have assumed four cents?

A. That is what you gave me.

Q. What would it be at eight?

A. It should double that approximately.

Q. And ten cents, two and a half times?

A. Yes, sir.

Q. What is the gross?

A. The ultimate net profit at the end of fifty years.

Q. No, I mean gross?

A. Your gross would be about $750,000 worth of gas and ultimately at ten cents——

Q. What was your gross, did you say?

A. My gross was $307,000.

[fol. 474] Q. Now, at eight cents it would be $614,000.00?

A. That's right.

Q. At ten cents it would be two and a half times 307 or about $750,000.00, or more?

A. That's right.

Mr. McBee: If the Court please, I would like to interrupt,—with reference to Exhibit 54,—at this time we offer in evidence Exhibit 54.

Chairman Bond: Received.

Reporter's Note: Exhibit 54 is the form used by the Commissioners of the Land Office in execution Oil and Gas Mining leases, and said Exhibit is attached, with other exhibits, at the close of oral testimony in this case.

Cross-examination resumed——

Q. Are you fairly familiar with the ordinary method in which gas is produced in all wells in the Field, with reference to whether or not during flush production or virgin pressure—I'll withdraw the question,—strike that question.

Q. The fact is that a great amount of gas is consumed for the manufacture of carbon black out in that Field, isn't it?

A. I understand there is considerable used.

Q. It is used both in the channel and in the furnace process, isn't it?

A. Yes, sir.

[fol. 475] Q. What is the price of carbon black?

A. Well, I haven't checked recently, but I think three and a half cents for furnace and five cents for channel,—I don't know for certain, but that's my recollection.

Q. I will ask you, to refresh your recollection, if it isn't around two and a half to four cents, in that range for channel and around two and a half cents for furnace?

A. Well, I don't know exactly.

Q. Well, it's somewhere around that, isn't it?

A. It was my understanding that it was a little higher than that,—the last time I checked it was.

Q. How many pounds of carbon black do they get from 1000 cubic feet, ordinarily?

A. Somewhere around one and one-fourth to one and one-half.

Q. The thinner the gas the less carbon black is produced, isn't that true?

A. There is some difference in the richness of the gas.

Q. Other things being equal, the thinner the gas the less carbon black is produced,—isn't that right?

A. I don't agree with that statement, because tests have been made and it didn't show any substantial gain when propane was introduced and thereafter it was abandoned. The Government spent several thousand dollars on an enrichment program and it didn't seem to be successful and was abandoned.

Q. You are still referring to channel black?

[fol. 476] A. Yes.

Q. You say it ranges from 1¼ to 1½?

A. It would be somewhere around one to three,—1.75 is about the average. I haven't checked it but I know that's the average of Texas and the Panhandle.

Q. Well, there is oil in Texas, down underneath, isn't there?

A. Yes.

Q. There is no oil in the Hugoton Field?

A. So far as known.

Q. I will submit you a statement of the Bureau of Mines for 1941, in these words, "The average value of carbon black at the plant rose from $2.90 in 1940 to $3.46 in 1941",—would you consider that approximately correct?

A. Yes, I think that's considered authoritative.

By Commissioner Armstrong:

Q. It's a lot higher now, isn't it?

A. Yes, it is, due to synthetic tires.

Q. About what,—do you know what the carbon black plant has been accustomed to paying for gas used in it during the last five year period?

A. I have heard some of the prices,—yes, sir.

Q. All right, state the lowest and the highest, and the range.

A. I think it has varied from about a half cent to about two and a half, possibly.

Q. Notwithstanding the production of the furnace type is higher the quality is inferior, as indicated by the price received for it.

[fols. 477] . . . it, than the channel black, isn't it?

A. It is inferior for certain purposes. That's the way it is now but there are some rubber people who feel that the furnace black can be developed to replace channel black.

Q. Those are eggs that haven't been hatched yet, too?

A. Not necessarily,—I have talked to different chemists and they think they can develop it.

Q. It's use has increased, hasn't it?

A. I guess it has,—there have been more tires made.

Q. There are millions of little jets and a metal surface for the deposit of channel black or what is commonly known as soot?

A. That's right.

Q. And then they scrape that off of there by means of a revolving shovel or revolving scraper, and sack it and put it on the market where the tire factories are, or at least, there is some freight to pay to those places?

A. Yes, sir.

Q. What is the proportion or the amount of labor necessary in those plants?

A. I don't know.

Q. Channel black carbon plants are enormous plants, aren't they?

A. Yes.

Q. Well, they have a good many men to tend this machinery, don't they?

A. I'd think it would take quite a few to run the plants, [fol. 478] as large as they seem to be.

Q. Are you able to compute, in an ordinary channel black plant, operated in the Hugoton Field, with gas of the nature that you know it to be in that field ——

A. I testified that it was about 950 to 1050, probably one thousand average——

Q. ——what they could afford to pay for gas in order to make any profit using natural gas for the production of channel black?

A. If you will give me the price.

Q. Of what?

A. Of the channel black.

Q. Well, as you have testified, yourself, the price of channel black such as stated would be probably four and a half cents,—and furnace black about three cents.

A. Based on four cents,—you get about a pound and a third, which at four cents would be five and one-third cents.

Q. Based on four cents you would come out about even, wouldn't you, if you paid four cents?

A. That might be about the situation.

Q. Isn't that the result of your computation?

A. Using those factors, it is.

Q. Now, as an expert on oil and gas, don't you know that they can't, commercially and continuously, pay as high as four cents for gas, in the production of carbon black, channel black, and that if you raise it above the four cents price you [fol. 479] are bound to impose a loss, even when we haven't considered interest, labor charges and other expense, isn't that right?

A. Yes.

Q. Now, we come to the furnace black plants,—there are two of them out there,—what do they make,—something like five to eight or nine pounds?

A. Yes, that would be about right.

Q. Take the average and apply to that four cents, what would be the result?

A. I would say eight pounds might be average when they are running at high capacity,—if the black should run around 5 pounds it would be twenty cents, at 8 pounds would be thirty-two cents per thousand cubic feet used.

Q. It would range from 20 cents for 5 pounds to 32 cents for eight pounds, assuming four cents for the gas per thousand cubic feet.

A. That's right.

Q. Now, you have assumed a price of two and one-half cents per pound,—two and a half to three and a half on the furnace black,—at 3½ cents, making eight pounds, would be——

A. Twenty-eight cents.

Q. Now, out of that you would have to pay for that gas, pay some interest on your investment, your labor, amortization,—depreciation, I mean,—do you know anything about those factors?

A. No, sir.

[fol. 480] Q. Not knowing, then, you couldn't tell how much they could afford to pay for gas at Hugoton?

A. No, I wouldn't be able to tell you that.

Q. They are paying four cents for that type, aren't they?

A. Well, I don't know what they are paying, sir.

Q. Now, reverting just for this question to the phase of the prospective new use of natural gas for the synthetic production of gasoline, the Mr. Keith, whom you say you prefer to believe over Mr. Benjamin Miller,—he says his Company when it goes into operation will make gasoline from natural gas and they figure the "out-of-pocket" cost of the gasoline will run about 2½ cents per gallon——

A. What do you mean, "out-of-pocket" costs?

Q. Based on the purchase of natural gas for five cents per Mcf, delivered at the refinery, and with all expenses and costs, interest, depreciation and amortization added, the total cost of producing gasoline would be about 5¼ cents per gallon, which, he says, is in line with the present cost of manufacturing gasoline from crude oil,—would you say that is a correct statement as to what you contemplate will be the result of the Fischer-Tropsch process plant, at Brownsville?

A. I think that's the Brownsville——

Q. You agree to that?

A. I have no cause to differ with him,—he is more familiar with it than I am.

[fol. 481] Q. Referring again to Mr. Benjamin Miller, whom you have said is dependable and capable, along the line of chemical engineering, Gas and Oil, he made a statement in the American Gas Journal, July, 1945, as follows: "One distinguishing feature of the channel process is the small yield. Less than 5% of the carbon in the gas is recovered as carbon black. This low yield has several effects. It makes it necessary to use large volumes of gas to produce channel-process carbon black at a commercial rate. Since the price at which the product sells is relatively low, that is, a few cents per pound for the great bulk of it, only low-priced gas could be used." Is that statement substantially correct, or is it not?

A. Yes, sir,—I might add there, Judge, most companies have both types of blacks and they might be able to balance their profits by having that advantage,—and I think that's what they are doing.

Q. I thought you said a while ago that it was an undisputed economic principle that money flows to the place of highest reward?

A. I said, usually. In the particular instance you are talking about I think it would be impractical to sell so much channel.

Q. You admit they use it in the side walls,—somebody would have to produce it.

A. Somebody would have to produce it,—that thing just hasn't happened yet.

[fol. 482] Q. The natural site or place for a carbon black plant is not in the virgin field, or in a place where they have wet gas or rich residue gas, and probably, in this country, distress gas that may be wasted,—isn't that true?

A. I think that's history,—previous practice, yes.

[fol. 483] Q. Wasn't Reid Corr formerly the General Counsel for Columbia Carbon and now I think the President openly stated that carbon black plants can't pay high prices for gas and were not against pipe lines?

A. He might have said that.

Q. He did not intend to establish the policy that you have mentioned?

A. I don't know what you refer to or have in mind.

Q. The typical policy for operators——

Earl Pruet: We object because he said he didn't know what the man said.

Chairman Bond: Sustained.

Q. You're not a regularly employed engineer by the Peerless are you?

A. No sir on retainer.

Q. You spent ten days in preparing that article from which you read, how much more time did you spend in the service of Peerless in anticipation of this case?

A. That is all.

Q. You made no exhaustive examination of the field?

A. Of the field?

Q. Yes.

A. Not for Peerless, I made for other on other matters.

Q. It is a fact that of the 133 wells we have that most of [fol. 484] them are of recent origin aren't they?

A. Its my understanding yes sir.

Q. And skelly was practically all recent wells?

A. I believe I heard that testimony yes sir.

Q. There has been gas produced there at least since 1926?

A. I believe Mr. Ellison gave the date of discovery some where along there.

Q. The Wilcox had quite a large well there in 1926?

A. I don't know, I don't know whose it was or the size of the well.

Q. The man who later sold out to Republic in Hougton had a fifty million open flow or more?

A. I don't know.

Q. And notwithstanding the fact that Fischer-Tropsch process was publicized during those years there was not an attempt to build a Fischer-Tropsch plant in the Hougton Field?

A. No sir.

Q. Now other companies have built expensive plants of different kinds out there during that period haven't they?

A. Yes sir.

Q. Now with reference to your statement that you didn't believe that you used the word "intrinsic value" I will ask you to look on page 9, take 8 and see if in the testimony on May 8th that you didn't say, "It follows that the present wellhead price being paid in Hugoton is inconsistent with its intrinsic value"?

[fol. 485] A. Sir, I said it and I was mistaken awhile ago.

Q. You don't want to revise your testimony?

A. No sir, that is what I said.

Q. Turn again to Take 10, page 1 and see the following question and answer, "Q. You have already answered my question as to whether or not you have an opinion as to the intrinsic or actual value of natural gas at the wellhead in the Gymon-Hugoton Field, based on its comparative value as compared with other classes of fuel,—you have said that you have such an opinion,—now, what is that opinion as to the intrinsic or actual value of natural gas at the wellhead?" and your answer was, "A. I think its worth ten cents."

A. Ten cents per thousand cubic feet.

Q. It was your attorney that used those words at that time using intrinsic value.

Earl Pruet: Its based on a comparative value also.

A. That follows the comparative value.

Q. Now you have sufficient knowledge of that field of your prior investigation and knowledge and from the examination you made for Peerless to know whether or not physical waste is going on out there do you know?

A. I don't know now.

Q. You don't know of any physical waste going on out there?

A. Venting gas in the area?

[fol. 486] Q. Or any other kind of physical waste?

A. I don't know of any.

Q. You never heard anyone saying that there was any there?

Earl Pruet: We object for hearsay.

Chairman Bond: Sustained.

Q. You have no belief that there is any out there?

Earl Pruet: We object to that.

Chairman Bond: Sustained.

Q. Now Mr. Mayfield, what is your definition of "economic waste"?

A. I think the example that I previously gave which was given yesterday as to comparative values of fuels will show that gas is selling somewhere its 1/5th of the current value of fuel, oil, coal, is economic waste.

Q. Because it didn't sell comparatively with coal and oil?

A. And crude oil.

Q. I said oil.

A. Fuel oil and crude oil.

Q. You concluded that any sale below parity with the present price of these fuels with which comparisons were made was economic waste?

A. I said that was a comparison, here was indicated as economic waste. I don't know what the level should be but I said ten cents should be a reasonable figure.

Q. You don't know what it ought to be?

[fol. 487] A. I said ten cents.

Q. Why do you say that you can't know what it ought to be?

A. Your question inferred that I said something different than ten cents, I said ten cents, and that was a matter of opinion.

Q. Now suppose one man sells gas to another man at five cents and that gas is worth six cents, is that economic waste?

A. If its below the comparative value its economic waste.

Q. There just isn't anything wasted in this transaction?

A. Its utilization of waste——

Q. I am talking about the sale of it, if one man sells it to another an article for five cents?

A. He can give it away if its his gas.

Q. That isn't economic waste if he gives it away?

A. I think it would be yes.

Q. Now isn't it clear to you that the detriment of one man is the gain of the other man, but that is not waste however?

Earl Pruet: We object to his being speculative and it calls for a conclusion of the witness and his question or statement is not based on the evidence but on philosophy.

Q. I am trying to get him in line on his views of this.

A. I would not say that is always correct, no sir.

Q. Where does the waste come in, one man gains as much as the other man looses?

A. The man that sells it loses.

[fol. 488] Q. He looses one cent and the other man gains that one cent so nothing is wasted?

A. On that theory no.

Q. And the fact that a thing is sold to ship the more sale of it doesn't constitute the waste of anything?

A. Are you still talking about the Houg-ton field?

Q. Anything?

A. I say that gas—if it isn't sold out of the Hug-ton field at an excessive price and at a too low a price, then there must be an economic waste there.

Q. If somebody gains, will anyone loose, there is no waste there?

Earl Pruet: We object to that for the reason that I don't know whether its Skelly or who he is talking about.

Chairman Bond: Sustained.

Q. That is the facts, it is a clear question, I am afraid that Your Honors don't go along with me when we speak of economic waste.

Earl Pruet: If the gas is given away it will be waste to the producer and waste to the State of Oklahoma in the form of taxes.

Q. Assuming that somebody gains in the sale of gas, will anybody or everybody loose in that sale, can there be an economic waste?

[fol. 489] A. Yes.

Q. Alright, now where is it wasted?

A. It could be wasted in the use to which its supplied and the fellows that buy it might displace the use of it.

Q. You are talking about uses subsequent to that sale?

A. You can't buy it if you can't sell it.

Q. It is true isn't it Mr. Mayfield that you are considering what will follow that sale?

A. I don't see how you can separate them.

Q. Now a sale of gas—if somebody gains all that anybody or everybody else looses nothing has been wasted has it?

Earl Pruet: That was lost to the man that sold it, that is a simple question.

Q. I want to know where the financial or economic waste is and that question will bring it out.

A. I said it depends on the sale and who buys it and why it is sold, and the parity price—all that is to be taken into consideration on economic waste.

Q. If you fail to sell it at parity at all times it is waste?

A. I mean that all fuels are sold competitively.

Q. Yes and in competition when one man looses another man gains and there isn't anything wasted, isn't that true?

A. I would not agree with that.

Earl Pruet: We object because of argumentive.

Chairman Bond: That is right, he is.

[fol. 490] Q. You don't have in mind any kind of waste other than what one man gains another loses?

A. Everyone involved in that particular field, yes.

Chairman Bond: The Commission will recess until ten o'clock in the morning.

[fol. 491] Now on this the 11th day of July, 1946, A. D. persuant to adjournment on July 10th, 1946, A. D. further hearing of this case, C.D. 1054, Peerless Oil and Gas Company, a corporation, Applicant vs. Cities Service Gas Company, a corporation, Respondent, was had, all previous appearances being made with the Commissioners of the School Land Department, State of Oklahoma also appearing by their attorneys, Walter Marlin and W. D. McBee;

The Oklahoma Corporation Commission being in session, the following proceedings were had:

[fol. 492] Chairman Bond: Gentlemen, are you ready to proceed?

Earl Pruet: Yes sir, we are ready.

Whereupon, M. L. MAYFIELD was recalled to the stand.

Witness examined.

By Earl Pruet:

Q. You are the same Mr. Mayfield who has heretofore testified?

A. Yes, sir.

Q. Counsel yesterday asked you a question about one man selling a commodity for less than it was worth to another man, *ir* sold it for less than it was worth, now in this case we have involved a natural reserve of the State of Oklahoma, we are not concerned with the benefits of the City of Kansas City as to the policies of the Cities Service Gas, we are concerned as to the question wherein it involves the State of Oklahoma and the question of loss to the State of Oklahoma, and what it means to the citizens of the State of Oklahoma in the form of taxes, with that under consideration, state to the Commission whether or not in your opinion the sale of the Natural Gas in the Hougton Field for less than ten cents per thousand cubic feet is economic waste?

A. I previously testified that that is true.

Mr. Cullison: We object to that as no foundation was laid. He said he was not an economist but studied Petroleum Engineering, therefore no foundation has been laid for the question.

[fol. 493] Chairman Bond: The Commission would have sustained an objection, but on cross-examination the Commission permitted you to ask whether it was economic waste.

(Whereupon an oral argument was had off the record.)

Chairman Bond: Did the Federal Power Commission reduce your rates, Judge Cullison?

Mr. Cullison: One-third.

Chairman Bond: If they did, did that have anything to do with economic or physical waste?

Mr. Cullison: I do know that they allowed us one and three-quarters cents per thousand.

Chairman Bond: If you hadn't been buying gas so cheap would that have changed the outlook of the rate case, didn't they base that rate on what you were paying?

Mr. Cullison: Now they based that on one and three-quarter cents for over fifty percent of the gas.

Chairman Bond: Suppose you had been paying ten cents for the gas in the Hougton Field, what effect would that have on the rate case?

Mr. Cullison: I am not acquainted with all of them. I am only acquainted with our Oklahoma man. I would hate to say from what knowledge that I have of it.

[fol. 494] Chairman Bond: Can you gentlemen find some authority on this question?

Mr. Cullison: It is the general law, that a witness in order to pass an opinion as an expert must have a sufficient foundation laid for an opinion to be passed. He positively said that he was not an economist.

Chairman Bond: And the Commission will so hold that he is not an expert economist. The Commissions mind is clear that if he is going to testify as an economist, he must so qualify.

Earl Pruet: If the Commission please, this man testified that he was a Natural Gas Engineer. You have to be thoroughly familar with the economics of the Natural Gas industry. When Judge Cullison was questioning him, it was as to the law and supply and demand, and as such engineer, he would be familiar with the natural gas industry.

Mr. Cullison: This man has testified that he is a Mechanical Engineer and had taken a post graduate course in Petroleum Engineering and never worked for a gas company in his life.

Mr. Mayfield (the witness) I would like to correct Judge Cullison. It so happened that there were twenty-eight operators and four companies involved and that was a unit [fol. 495] operation where there were several gas companies involved.

Mr. Cullison: I want to add further that this man testifying as an economist would be infringing on the province

of this commission. This commission passes on all facts of law and evidence introduced in the case.

Chairman Bond: The Commission will receive the testimony and reserve the right to rule and if the Commission can make its self clear to counsel lets divert from the Engineering profession and go into some of the other professions. It would be our idea that if you started to study medicine, in order to practice medicine, you will study other questions, and in testifying as a physician, there might be other questions to pass upon. This man as an engineer has to study sufficient questions to prepare himself to be an engir r and could perhaps pass on other matters in connection with his profession.

(Whereupon oral argument was had off the record.)

[fol. 496] (Continuation of argument upon objection of Judge Cullison)

Chairman Bond: The Commission will hear the evidence and will reserve the right to rule later on the legal questions. You may proceed.

Judge Cullison: Exceptions.

Chairman Bond: Exceptions allowed.

Redirect examination resumed.

By Mr. Pruet:

Q. What was your connection with P.A.W.?

Judge Cullison: Has he answered the question we have been arguing?

Mr. Pruet: I'm going to let that question ride,—I'm asking him another one.

Q. What was your connection with P.A.W.?

A. Assistant District Director of Natural Gas and Natural Gasoline Division.

Q. During the time you have been engaged in that capacity did you have occasion to make a detailed study of the natural gas industry, including the production, transmission and distribution of natural gas in that district?

A. Yes.

Q. During that time and during the time that you have been Consultant Engineer have you had occasion to make

a study of the economics of the production and transmission of natural gas?

A. Yes.

[fol. 497] Q. And do you consider that you are familiar with the economics of the natural gas industry, with reference to its production and transmission?

A. Yes, sir.

Q. Now, then, based upon your knowledge of the production, transmission and distribution of natural gas, can you state whether or not the sale of natural gas and transmission of natural gas out of the Guymon Hugoton Field at a price less than ten cents per thousand cubic feet constitutes waste of natural gas?

Judge Cullison: (Addressing Commissioner Armstrong):

Are you authorized to accept evidence when only one member of the Commission is present?

Commissioner Armstrong: We'll wait for Judge Bond to return.

Reporter's Note: Proceedings suspended.

[fol. 498] (After short intermission, oral argument was had off the record.)

Commissioners Bond and Armstrong on the bench.

Earl Pruet: Long ago, before all of the argument started I asked him if he had an opinion, and I asked if his supply and demand had anything to do in the Hugoton field and that question hasn't been answered.

Mr. Cullison: Same objection.

Chairman Bond: Overruled.

(Witness Mayfield.)

A. One of the principal reasons as I explained earlier, due to the past history of the gas industry, gas was discovered incident to oil, therefore most of the acreage held by the large companies, those companies not having markets with adequate resources and capacity laid pipe lines and developed some markets leaving the smaller land owners out, and in most instances it (gas) was sold at a disastrous price. There was some instances where gas was given away to hold the leases. Companies that buy the gas for

pipe line usually take it or leave it at a price, for the life of the lease and therefore under such dedications for long period or life of the field, that is, to depletion, it crowds out the normal factors of normal supply and demand, because if the demand increases, there is no change in price.

Earl Pruet: That is all.

[fol. 499] Recross examination.

By Judge Cullison:

Q. What do you mean by "economic waste", when you say the sale of gas at less than ten cents is economic waste?

A. I mean to say this,—natural gas is recognized as the most valuable fuel in the world,—it is a natural resource, irreplaceable, and if it is sold at a price lower than the comparative value of other fuels that sale is economic waste to the people concerned.

Q. It is economic waste to some people, but not to another person,—isn't that true?

A. Well, I have specified in the Guymon-Hugoton Field.

Q. Well, can you define "economic waste", not with reference to that Field, or any Field, but generally?

A. Well, I have, with reference to natural gas, and that's the reason I limited my answer.

Q. You can't then give a general definition of economic waste?

A. No, I'm applying it to natural gas.

Q. You say that's economic waste, but you can't define economic waste, can you?

A. I'll give you my definition of it,—whenever you produce and utilize an irreplaceable natural resource at below its true comparative value with other resources, when that natural resource, if replaced, will undoubtedly cost more than was realized from such utilized natural resource, economic waste is suffered.

Q. You have brought in a new element, "utilization".

A. I think it is a factor.

[fol. 500] Q. Well, I'm talking about the sale alone as constituting waste,—is there anything in the sale process, dissociated from utilization, that would produce economic waste?

A. Yes, we have seen where the low price received for natural gas has constituted economic waste. You can't afford economically to put that gas into the line when——

Q. There is no oil and there has been no wet gas in that Field, has there?

A. It is predominantly a dry gas.

Q. There isn't any wet gas there or any oil?

A. To this date, no.

Q. Now, that not being comparative, then your conclusion rests on the association of the utilization of the gas with its sale, doesn't it?

A. That's one of the factors,—yes.

Q. What I mean is, if you disregard the utilization that follows the sale, perhaps remotely removed from the sale, two or three steps removed from the sale itself, then there is no waste, is there?

A. Well, if I follow your reasoning,—absolutely there is waste, sold at a low price.

Q. No, I mean there is no waste inherent in the sale itself, —there is no waste, is there?

A. Following your reasoning you might get down to where there would be no waste so far as you are concerned.

[fol. 501] Q. Disregarding things aside from the sale, there is no waste, is there?

A. I am limiting my answer to the fact that you can't produce and sell an irreplaceable natural resource at a price below its value as compared with other fuels, in this case, and you can't reproduce or replace that resource at the price it is sold for, then economic waste results.

Q. That's the reason you think it is economic waste?

A. I think that's one factor.

Q. Now, then, let's consider only the sale, if you will,— we'll just say that everything other than the sale is out of mind,—we are considering the sale and nothing else, at all.

A. I don't see how you can give an answer to that question.

Q. You mean it is incapable of being answered yes or no?

Whether or not a sale at a price cheaper than some other given price is of itself waste?

A. Well, I have said——

Q. I know what you have said.

A. Well, that's my answer.

Q. But, if that doesn't follow,—if they devote that gas to a higher use, as you consider,—if they devote it to a higher use and buy it very cheaply, there is no waste, is there?

A. I didn't say what use——

Q. Put it this way,—if you disregard everything but the transaction that comprises the buying from the producer [fol. 502] and the delivery to the seller, and it's cheaper than you think it ought to be but considering that sale, that transaction, alone, is there any economic waste?

A. You can't disregard all the other factors.

Q. Well, we'll come to that later.

A. Well, you can't disregard the other factors.

Q. I'll put it this way,—if A sells to B cheaper than he should, doesn't B gain exactly what A loses?

A. Not exactly.

Q. Give an illustration.

A. I think you illustrated it when you were giving the——

Q. You think the buyer doesn't gain what the seller loses?

A. I was just illustrating what——

Q. Does the buyer gain what the seller loses?

A. He may and he may not.

Q. Nobody has lost in an economic way,—isn't that true?

A. This irreplaceable natural resource is gone.

Q. But the buyer has it? You can't answer the question?

A. I have answered it.

Q. You can answer it, or can't you answer the question whether where a seller sells to a buyer at less than the thing is worth the buyer gains what the seller loses?

A. I have answered that question, too.

Q. You have replied, but you haven't answered it.

[fol. 503] A. I just haven't given the answer you want.

Q. I think it's a question that can be answered yes or no——

A. I answered yes, but within limitations. You omit certain factors, that should be considered.

Q. Now, suppose a man who buys it cheaply in the field sells it at a reasonable price to the consumer,—doesn't the consumer thus gain what the seller in the field is supposed to be losing?

A. I have previously answered that question, I believe.

Q. In that case there would be no economic loss in the sense of the body politic, would there?

Mr. Pruet: We object to that——
Chairman Bond: Read the question.

(Question read.)

Chairman Bond: I think that's repetition, Judge.
Judge Cullison: I'll withdraw the question.

Q. If on the other hand the purchaser in the field sells to somebody who uses it at a reasonable profit, the buyer in the Field and the seller to the consumer gain that much and there is still no loss, no waste?

A. I don't agree with that.

Q. What part of it is it you don't agree with?

A. Well, I don't agree with it.

Q. Well, state your objection.

A. Well, you are far removed from the actual fact that [fol. 504] natural gas is an irreplaceable natural resource and as such it should bring a fair price,—it must bring a comparative price with crude and other fuels.

Q. You hang your opinion on the fact that there is a disparity in the price of natural gas as related to other fuels?

A. On the fact that natural gas, being an irreplaceable natural resource, should not be sold at less than its comparative value with other fuels.

Q. So that relatively, either the other fuels are too high or gas is too low?

A. I think, definitely, gas is too low.

Q. But your proposition, that it depends upon whether it is on a parity with other fuels, depends, for any absolute force, on which is too high and which is too low?

A. No, as I brought out in my other testimony, there is another factor involved. I brought that out in my previous testimony. The comparative fuel value is not the only factor. I made reference to the chemical utilization of natural gas, as well as its comparative value as a fuel.

Q. You refer to things that are already being done in the way of producing chemicals from natural gas?

A. Yes.

Q. You said the comparison between the sales prices of coal and other fuels wasn't complete because it didn't include the allusion to chemical manufacture,—now, I'll ask

[fol. 505] you whether you mean those presently being made or those to be made in the future?

A. I mean both,—what is being done at present and what is going to be done, too. Now, we discussed, also, the possibilities of the Fischer-Tropsch process——

Q. Well, I still haven't got you to limit yourself in your suggestion that I should submit for comparison the fuel values of chemical extractions, for comparison with prices of other fuels,—those that are now being conducted or those that you expect to come in the future?

A. I think both are factors. I think it is the only source of demand as compared with pipeline demand that you would have and it is showing its effect on the consumption.

Q. Now, as a rule of economics, those things that exist that have an influence on prices and determine whether a given price is economic waste, or not, would be reflected in the price itself, wouldn't they?

A. If there was free play of purchase and sale.

Q. So that would pass out of the picture if there was a free chance for people to buy gas out there,—is that right? If there was a free chance to buy there would be a sale, wouldn't there?

A. There might be, but there isn't in this case.

Q. Now, as a matter of fact, the Panhandle Eastern Gas Company, The Southwest Public Service Company, the Phillips Petroleum Company, are either within that field or within commercial striking distance, of it, aren't they? [fol. 506] A. Yes, sir.

Q. So far as you know there is no combination or conspiracy among those companies to control prices? To keep prices down?

A. Not to my knowledge.

Q. If the gas were sold cheap enough up there there would be plenty of people there to buy it, wouldn't there?

A. I don't know.

Q. Don't you know that ordinarily those companies like to buy gas——

Mr. Pruet: If the Court please,——

Judge Cullison: I'll withdraw the question.

Q. So there isn't any artificial barrier that is not removable?

A. I think the dedication of a reserve is an actual barrier to any price increase that might come about through the force of demand.

Q. Don't you know that those contracts which you probably have in mind when you refer to a dedication have provisions for the adjustment of prices? And that they will regulate or make the going price from time to time?

[fol. 307] A. I really don't know.

Q. And if they do they would not interpose this artificial barrier by deduction?

A. I don't think that they are artificial.

Q. I mean that nature didn't put it there?

A. I don't know.

Q. If they did, then that qualification of demand and supply would disappear wouldn't it?

A. Under your hypothetical assumption, it would yes.

Chairman Bond: The Commission will recess until 1:30 p. m.

(Whereupon Court adjourned until 1:30 p. m.)

[fol. 508] Now on this the 11th day of July, 1946, A. D. pursuant to adjournment at 12:00 noon, July 11th, 1946 A. D. further hearing of this case, C. D. 1054, Peerless Oil and Gas Company, a corporation, Applicant vs. Cities Service Gas Company, a corporation, Respondent, was had, all previous appearances being made with the Commissioners of the School Land Department, State of Oklahoma also appearing by their Attorneys, Walter Marlin and W. D. McBee; The Oklahoma Corporation Commission being in session, the following proceedings were had:

[fol. 509] Chairman Bond: Gentlemen, you may proceed.

Mr. Cullison examines the Witness:

Q. To put it briefly, your conclusions about economic waste, I will ask you if you meant in your answer that whatever gas was selling below the parity price between this and coal, when the valuable derivitives if either are considered that the sale of gas is economic waste?

Earl Pruet: We object to that for the reason that it doesn't have all the elements, it doesn't mention the price of gas, he says the sale of gas.

Mr. Cullison: Any price.

Chairman Bond: Overruled.

A. A moment ago, I mentioned that on any sale of gas of a natural resource that was below a parity price of other fuels which would tend to deplete virgin gas, where other sources of gas could not be sold at the price being offered for that virgin gas that that was economic waste.

Q. Now there is no other kind of gas—there hasn't been but one kind in the Hugoton Field has there?

A. That is right.

Q. So as to the Hugoton field you eliminate the other gases not capable——

A. I don't believe so, after your description of the pipe line—whatever was done at Hugoton will effect other sources within the state.

[fol. 510] Q. Then you don't mean to say that whatever gas is being sold below the comparative price for coal considering the valuable derivable from each gas sale constitutes an economic waste?

A. Gas sales at the price we referred to?

Q. I said that I assumed the price below?

A. I can't say below. I said the prices which I heard stated in this hearing that I understood exist in that field.

Q. But if such prices in comparison are above parity what prices to others then that would not be economic waste to the sale of gas?

A. I doubt if there is a sale.

Q. Then on your theory the question of economic waste is determined on whether or not the gas is being sold below the proper comparitive price for coal or other fuel compared when considering all of the valuable elements particularly derivable from each, is that correct?

A. I think that statement partially covers some of the items I mentioned, yes.

Q. Is that correct?

A. Not completely no sir.

Q. Alright now what element did I leave out?

A. I don't know.

Q. Well, it's practically correct?

A. It may be complete but it's not very clear, I will put it that way.

[fol. 511] Q. So far as you do understand, it is correct?

A. Well, I don't understand it frankly.

Q. What part is it that you don't understand if it's practically correct, I would go on, but I think that he should say that it is or it isn't correct.

Floyd Green: Why don't you let him state what he does understand by the question.

A. There are a couple of words that I don't understand when you state it the way you did. It's essentially correct.

Q. Now conversely what coal is being sold below a price below the proper comparative price of gas?

A. Again Judge, I don't know what you mean by proper comparative.

Q. By considering its fuel value and all values practically derivable from such coal that is economic waste in the sale of coal at that price?

Earl Pruet: Now you are assuming that coal is being sold?

A. I think under your hypothetical situation it might be assumed yes. I might accept it would be irreplaceable by something or replaceable.

Q. Except for the policy of irreplaceable, the same thing would apply?

A. Possibly.

Q. And it would apply to peat, wouldn't it?

[fol. 512] A. On the same basis you mentioned?

Q. Yes.

A. Yes.

Q. And it will apply to lignite?

A. I think so.

Q. Then in order to prevent economic waste the sales over the country and at each of the places in the country would have to be at such prices that we would not be below for the good substance sold the proper comparative ultimate price for fuel and everything of value could be derivable or derived from the good substance being sold in order to prevent economic waste occurring at the place of the investment sales?

A. I think that it's a matter of production rather than sale.

Q. Production rather than sale?

A. Yes sir I think that this goes back to the location of the natural resources.

Q. Let the transaction I have inquired about—say occurs at its place of production, then they have to be kept in balance or parity as you said or that would be economic waste of some of those things,

A. It's conceivable, yes. It's a Hypothetical question, I say under a hypothetical question some things can result and other things can result too.

Q. On that line of reasoning ordinarily——

[fol. 513] A. As I explained the gas business is unique, you don't have the free play of supply and demand under the long term contracts and acreage dedication, the characteristics of gas is virgin and when its produced it has to move to market, others don't have to.

Q. And along your general theory that will be true in every field in the state where gas is produced in the state isn't it?

A. What general theory?

Q. That you base this on being the below parity price?

A. I didn't know the price in every field, no sir.

Q. But if its below parity from the comparative value of each article for fuel and all other valuable elements particularly derivable but if this will be economic waste in that field whatever that field is——

A. Yes that might be.

Q. And to maintain complete parity you would have to change the price of gas every time the price of coal is changed or peat or lignite or coke we will leave out other things to maintain that parity and prevent economic waste —there will have to be repeated changes as the price will change?

A. That might follow on unnecessary price, that isn't the trend.

Q. And the same thing would measureably and mainly apply to electricity?

A. Not necessarily, I don't believe it is a comparable and its not a irreplaceable natural resource.

[fol. 514] Q. You mean the element of being an irreplaceable natural resource is a necessary element as to economic waste?

A. Absolutely. I would not say that is the only factor but it is a very prime factor.

Q. You said that it is necessary?

A. It is but not the only factor that might permit that conclusion.

Q. But if it is necessary the conclusion would *would* not have been formed if it didn't exist?

Earl Pruet: We object as repetition.

Q. It might be argumentative, that is true.

That is all.

Witness excused.

[fol. 515] Whereupon, WALKER T. POUND, of lawful age, being first duly sworn, testified as follows, to-wit:

Witness examined by Earl Pruet:

Q. You have been served with a subpoena in this case?
A. Yes sir.
Q. You may state your name please sir.
A. Walker T. Pound.
Q. What is your official capacity with the State of Oklahoma?
A. Oil and Gas Conservation Officer with the Oklahoma Corporation Commission.
Q. How long have you been connected with the State in that capacity?
A. In that capacity since December 1, 1942.
Q. Were you connected with the state in any capacity before that time?
A. Yes sir, I have been with the Corporation Commission as a Deputy Conservation officer, I served about seven years, and I served as Executive Secretary to the Commission for one year.
Q. Before you became connected with the Corporation Commission of this State did you do anything, or have any particular experience in the Oil and Gas Industry?
A. Yes sir.
Q. State what that was.
[fol. 516] A. Well I have been in the oil business one way or another since about 1927. I worked for myself and others, was engaged in the oil business in Grady County, I was with Shell Petroleum Corporation for about three and a half years in West Texas and New Mexico and East Texas.
Q. What was the nature of your work?

Mr. Cullison: If the court please, unless this is confined to the Legislative Hearing, I want to object to this testimony. This think of qualifying an employee of the Commission as an expert witness and taking sides in this judicial matter.

Chairman Bond: The Commission is not putting this witness on.

Mr. Cullison: I know, but it is getting too close to the Commission.

Chairman Bond: Do you think that we have the power to tell this man that he cannot use a certain witness in his hearing?

Mr. Cullison: As an expert witness, I think they are getting too close to the Commission, now as to official things——

Chairman Bond: I don't know what he is going to testify too.

[fol. 517] Mr. Cullison: He is your officer, and he is going to throw his weight as an expert in a judicial controversy—as far as the legislative phase is concerned, that is beside the question.

Chairman Bond: I will hear some law if you have it or if Mr. Pruet cannot use any witness that he chooses.

Mr. Cullison: I don't know that I have any right at this time.

Chairman Bond: Alright, proceed gentlemen.

Mr. Pruet continues with the witness:

Q. What was the nature of your duties with the Shell Oil Company?

A. I was at that time, a trainee, I was in all divisions of drilling and production operations. I worked in the office, warehouse and as a roust about, pumper, switcher, gauger, worked as a roughneck, on rotary rigs and third man on cable tool rigs and for a short period I served in capacity as a laborer, in fact I served from laborer to foreman.

Q. Have you graduated from a college or University?

A. I attended A. & M. and O. U. but am not a graduate.

Q. During your practical experience in the oil and gas business and during the time you have been with the Commission, during the time you have worked—as a result of that experience—have you had occasion to make a detailed study in the oil and gas industry in connection to prodrjction

and transportation of natural gas and economics and the production of natural gas?

[fol. 518] A. I have had occasion to study the production of natural gas and the particular attention to its conservation and what I think leads to and results in good conservation and poor conservation practices.

Q. Has that study of those things been with reference to the Guymon-Hugoton Field in Texas County, Oklahoma?

A. Yes it has.

[fol. 519] Q. Are you more or less familiar with the prices now being paid in the Guymon-Hugoton Field, and with the kind of contracts in effect out there?

A. I am.

Q. Have you written any histories or any articles with reference to the production of natural gas,—the production, proration and conservation of natural gas in the State of Oklahoma?

A. Yes. I wrote a paper and read it at a session of the Indiana Basin Chapter of the American Petroleum Institute, on March 15th, 1944, at Mt. Vernon, Illinois, which paper was termed a History of Proration and Conservation in Oklahoma, having to do with both oil and gas, and I wrote a prepared statement before the Federal Power Commission at its hearing in Oklahoma City in October 1945, with relation to the production of and my personal opinion as to the conservation of natural gas in Oklahoma.

Q. From your studies and experience in connection with the natural gas industry in the State of Oklahoma, and particularly with reference to the Guymon-Hugoton Field, do you have an opinion as to whether or not the price of natural gas at the wellhead has a direct relationship to the conservation of natural gas as a natural resource?

A. I have.

Judge Cullison: Wait a minute,—we object to that and to the use of this witness as an expert to express opinions in a judicial matter between two persons, as against public policy.

[fol. 520] Chairman Bond: The Commission will hear him,—do you have any authorities, Mr. Pruet, relating to the testimony of a practical witness, practical conservation officer, who says he has no college degree?

Mr. Pruet: My question was as to whether he had an opinion on conservation in relation to price.

Q. Have you had occasion in your experience, particularly in your practical experience, with reference to conservation and production of natural gas, to make a study of the relationship between the price of natural gas at the wellhead and its conservation, as a natural resource?

A. I have.

Q. And from that experience and study do you have an opinion as to whether or not there is a relationship between price at the wellhead and conservation of natural gas?

Judge Cullison: We object to that for all the reasons already given and for the further reason that it is not confined to the Guymon-Hugoton Field.

Chairman Bond: Limit that to the Hugoton Field and the Commission will permit it. Exceptions allowed.

A. I have.

Q. State whether or not it is your opinion that a low price at the wellhead is not conducive to conservation of natural gas in the Guymon-Hugoton Field, in Texas County, Oklahoma.

Judge Cullison: We object to that as incompetent, ir- [fol. 521] relevant and immaterial, for all reasons stated in our objection to the last preceding question, and for the further reason that it is leading and suggestive.

Chairman Bond: Objection sustained.

Q. State what your opinion is in regard to the price of natural gas at the wellhead, in its relationship with the conservation of natural gas at the wellhead in the Guymon-Hugoton Field in Oklahoma, in Texas County.

Judge Cullison: We object to that for the reason that no sufficient foundation has been laid and for the further reason that it is against public policy for this official of the tribunal trying this case to throw his expert opinion into the balance in a judicial contest between two private parties, involving money.

Mr. McBee: We'll make him our witness for this purpose.

Judge Cullison: So long as it is a financial matter against a private person I still make my objection.

Chairman Bond: You may proceed, Gentlemen,—the objection is overruled. Exceptions are allowed.

Q. What is your opinion with reference to the relationship of the price of natural gas in the Guymon-Hugoton Field, with reference to the conservation of natural gas as a natural resource in the State of Oklahoma and the prevention of waste?

Judge Cullison: The same objection.

Chairman Bond: The same ruling, and exceptions allowed.

A. You want me to give my opinion?

[fol. 522] Q. Yes.

A. My opinion is that the price at which gas is sold at the wellhead has a very direct relationship to the prevention of the waste of gas, and, conversely, to its conservation. I think a low field price automatically results in waste.

Q. What forms of waste do you include in that word, "waste"?

A. Well, I——

Judge Cullison: We offer the same objection.

Chairman Bond: Overruled,—exceptions allowed.

Q. Answer the question, what forms of waste do you include in that word "waste", which you have just used?

A. Well, I think it just results in waste,—period. All kinds of waste.

Q. Do you have an opinion as to what the price of natural gas should be, at the wellhead in the Guymon-Hugoton gas Field, in order that waste may be prevented and the conservation of natural gas as a natural resource be promoted?

A. Judge Cullison: To which we make the same objection, with the additional one that there has been no foundation laid to put this question to this witness, in that no expert financial knowledge on the part of this witness has been developed, in——

Mr. Pruet: All right, I'll withdraw the question and ask another one.

Q. From your experience in and your study of the natural gas industry, in the capacities you have stated, over the [fol. 523] period of time which you have stated and your knowledge of the prices being paid in the Hugoton Field in Oklahoma, and from your experience with conservation, have you formulated an opinion as to what the price of gas should be in the Guymon-Hugoton Field in Oklahoma, in

order that waste may be prevented and the conservation of natural gas as a natural resource be promoted?

A. Yes.

Chairman Bond: The Commission will permit the witness to testify from his knowledge of the price there, and from his knowledge of what would be an adequate price, in order to prevent waste and promote conservation.

Q. What, in your opinion, should the price be, the minimum price in the Guymon-Hugotón Field, for natural gas, at the wellhead, in order that the waste of natural gas as a natural resource be prevented and the conservation of the same promoted?

Judge Cullison: To which we object, for the reason that there has been no sufficient foundation laid for this witness to pass such an opinion and no showing of his qualification to do so,—encroaching upon the province of the Commission in making the decision upon the ultimate question,—what is the right price in that Field? and incompetent, irrelevant and immaterial, because it doesn't tend to show the value, the market value, or the market price of the gas there.

Chairman Bond: This witness will be permitted to testify, alone, as to what, in his opinion, is an adequate price to be [fol. 524] paid for gas, in that Field, in order to insure conservation and prevent waste. Exceptions allowed.

Q. You may state that opinion.

Judge Cullison: The same objection.

Chairman Bond: Overruled. Exceptions allowed.

A. My opinion is that gas in the Guymon-Hugoton Field, in order to prevent waste, should not sell for less than 10 cents per thousand cubic feet.

Cross examination.

By Judge Cullison:

Q. What do you mean by "conservation", Mr. Pound? Now, I don't want you to read,—I want you to tell me.

A. You want me to define conservation?

Q. Yes,—without reading it.

A. All right, I would say that conservation is utilization with a maximum of efficiency and a minimum of waste.

Q. Efficiency in what?

A. Efficiency in production and utilization.

Q. Assuming that it isn't in the Field, isn't utilized in the Field,—efficiency in what then?

A. If it wasn't utilized you wouldn't have efficiency.

Q. All right, then,—what do you mean by utilization?

A. I mean proper use of it,—use consistent with sound conservation.

Q. Then your testimony and your opinion goes only to that gas that is used in the Field?

[fol. 525] A. No, if I follow you I don't mean that.

Q. Well, you said it was the use made of it,—you mean its use there in the Field?

A. No.

Q. You mean in another State where it might be taken?

A. Yes.

Q. Oh, you mean there must be maximum efficiency in the production of it in the Field, and a maximum efficiency in its use in another state, to which it may be carried?

A. No, I don't mean that.

Q. What do you mean.

A. When you say "in the Field" I assume you mean the venting of gas,—if it is vented it isn't utilized, in my opinion.

Q. Then, if what is utilized, including venting, in the Field, is utilized with maximum efficiency there, it wouldn't matter much what is done with that that is shipped out over the State lines, would it?

A. Well, I am not trying to go into the matter of the end use of gas, but if you pipe gas out of Oklahoma and vent it into the air, then I think we might prevent your taking it out of Oklahoma.

Q. Then you mean that if the gas produced in Oklahoma is used extravagantly or unwisely in other States, then you haven't secured conservation of gas in Oklahoma?

A. If it is used in some other state for a purpose that is prohibited in Oklahoma, my answer is "yes".

[fol. 526] Q. But I used the words "extravagantly" and "unwisely", in the other states.

A. Well, I don't know whether our statutes cover that, or not. If it is against the law to use it extravagantly or unwisely in Oklahoma then it would be against the law to use,—it would be against the law to produce gas in Oklahoma to be so used by any other state.

Q. Then, by "maximum efficiency" in utilization you mean that it is against the conservation of gas in Oklahoma if the use of the gas shipped into another state is for purposes prohibited by the State of Oklahoma?

A. I mean that in my opinion it would be a violation of the orders of this Commission and of the statutes of Oklahoma to produce gas in Oklahoma and vent it into the air in Kansas or any other state.

Q. Well, you said that once.

A. And I'll say it again.

Q. That's all you mean then that might be done that would be against the conservation of gas in Oklahoma?

A. No, it is not.

Q. All right, then,—go ahead,—tell me the others.

A. I think a low field price in Oklahoma——

Q. Wait,—I'm talking about utilization, now. You have just said you don't confine it to the venting of gas and you refused to answer my question about the unwise or extravagant use of it——

[fol. 527] A. No, I didn't refuse to answer it.

Q. Then answer it.

A. I said if those uses to which it is put are prohibited by Oklahoma, then my answer is yes.

Q. But, if those uses are not prohibited by Oklahoma, then such uses in other states would not affect the conservation in Oklahoma, is that right?

A. I don't know what happens in other states,—outside of that my answer is yes. I agree with you, in other words.

Q. All right,—now, you said the efficient production of gas in Oklahoma also has a relationship to conservation,—is there any waste out there at this time?

A. Yes, I think there is.

Q. Who is wasting it?

A. Well; everybody who is producing it.

Q. How are they wasting it?

A. Because they are selling it for less than it is worth.

Q. Selling it in other states for less than it is worth.

A. Selling it in this state.

Q. Well, that cause wouldn't reach out to the other states.

A. That's right.

Q. Then, as to that part that is sold in this state, there is waste because they sell it too cheap in this State?

A. At the wellhead, I mean,—I'm not talking about Republic—I'm talking about at the well.

[fol. 528] Q. Then how about the man who produces it and sells it in this State, outside that county?

A. The royalty owner out there and the State of Oklahoma, by its citizens, have an interest in that gas out there, and it's wasted at the wellhead when it goes through the meter at a price lower than its value. That's my opinion.

Q. Did somebody tell you that, Ted, or did you read it somewhere?

[fol. 529] A. I am a citizen of the State of Oklahoma and if what I know about our tax laws, the Tax Commission doesn't collect from you up in Missouri or some other place nor do the royalty owners pay from that end.

Q. Are you going on the idea that the State doesn't get as much taxes on a low sale as they would on a high sale, that is waste in Hougton gas?

A. That is one of the several elements.

Q. That is one ground?

A. Yes.

Q. Would that ground still be maintained by you if the person producing the gas or by the buyer in the field by purchasing it cheaply enough, pay enough income tax to the state, offset and exceed the amount of all taxes to the state as a royalty owner, then would you still persist in saying that it is economic waste to sell it at a low price?

Earl Pruet: I object to that as incompetent, irrelevant and immaterial. That is improper, he is a citizen of the state and he is considering the states welfare in this matter.

A. I can clarify my position.

Q. Can you answer my question?

A. I don't understand it the way you asked it.

Q. What part is it you don't understand?

[fol. 530] A. All of it.

Q. You don't understand it?

A. No, sir, in the first place its putting words in my mouth that I don't say and that are not mine.

Q. Is it because we add taxes, income tax that you don't pay, that the sale of the gas at a cheap price in Hugoton Field destroys conservation?

A. No sir.

Q. Alright tell me what the elements are?

A. I merely referred to the tax collection, Judge Gullison, as an illustration of the fact that the gas in my opinion

was sold in Oklahoma—that is the only sales that I am interested in, I am talking about what takes place within the state, not what goes on outside. I am interested as a citizen of this state. I have an inherent interest in the irreplaceable natural resource.

Q. Of whom?

A. Everyone in the State of Oklahoma.

Q. Including the producers?

A. Yes sir.

Q. Alright.

A. I will say that low field prices will result or tend to result in actual physical waste because it will leave gas in the ground, that will not otherwise be recovered, in my opinion.

[fol. 531] Q. Is there any physical waste out there?

A. I don't know of any appreciable amount of physical waste based on that one factor but it has happened in other fields and it will here.

Mr. Cullison: We wish to strike his answer because it is not responsive.

Chairman Bond: Overrule, exceptions allowed.

Q. There has not been any physical waste has there?

A. I don't know.

Q. Not to your knowledge?

A. The basic Hougton Order has probably prevented what waste might have occurred. There were many instances in the past, prior to the issuance of the order.

Q. Since that order there has been no waste?

A. I would not say there has been none, there has been less.

Q. Well, I asked you whether there was and is and you said none to your knowledge, now do you want to reconsider?

A. You are talking about actual physical waste?

Q. Yes.

A. I will say that there is none out there.

Q. But its your business to know as Conservation Officer?

A. Yes sir.

Q. And you have been diligent in performing your duties?

A. Yes.

[fol. 532] Q. And you haven't discovered any waste?

A. I think there will be waste out there with the present prices.

Mr. Cullison: We move to strike that voluntary answer. It was not responsive.

Chairman Bond: Let it be stricken.

Cullison continues with the witness:

Q. Do you know what the prices being paid in the field are?
A. I know what some of the prices are yes sir.
Q. What is the *waited* price being paid out there?
A. I don't know.
Q. What does Panhandle Eastern pay now?
A. I don't know.
Q. What did Panhandle Eastern pay to Phillips a year or so ago?
A. I don't know.
Q. What does it pay now?
A. I don't know.
Q. What does Cities Service pay to Skelly Company?
A. About three and a half cents I understand.
Q. Is that the present price?
A. I don't know how much now, they might have changed their minds, you change it every day, that was one of the prices given me.

[fol. 533] Q. That is one of the prices?
A. That is what the Skelly Representatives told me.
Q. What is the Republic Natural Gas Company selling gas to the Cities Service Gas for?
A. So Republic informed me, four cents per thousand.
Q. Isn't it a fact that Cities Service Gas Company never bought gas from Skelly at all at less than four cents at the well?
A. If you say so whether it is or it isn't so, is good enough for me. My understanding was that they sell it and pay the royalty owners on a basis of three and a half cents. I am not positive, but believe they charge one-half cent for gathering, it may be four and four and a half cents.
Q. I am informed that we pay four cents at the well and it is four and a half cents delivered.
A. I was misinformed then.
Q. I have detailed all of the proceedures of gas in the Hougton Field haven't I?
A. No sir.

Q. What does Cabbot Carbon Company pay?

A. Five cents for some of their gas and four cents for some of it.

Q. They pay for all except that which was fixed by this Commission as a condition and permission to build a plant—with their gas at four cents?

A. I think so.

[fol. 534] Q. That five cents was based upon condition that the plant shall cease taking gas for carbon black automatically without further order of the Commission, six months after the war?

A. Six months after the duration.

Q. Duration of what?

A. Your guess is as good as mine, that is what the order says.

Q. Six months after the duration?

A. I suppose it means the duration of hostilities, I don't know if that was the end of the war or not.

Q. That is only a temporary basis for five cent gas?

A. Except that order reads, unless otherwise ordered by the commis-ion.

Q. The presumption is that it will go out six months after the cess-ion of hostilities?

A. The order will expire at that time.

Q. That is what I mean.

Floyd Green: You said *cecession* of hostilities or the duration of war, to get the record straight, it said, "The duration of the war emergency".

Cullison continues with the witness:

Q. The price that you have mentioned, ten cents, is that a price that is necessary to maintain conservation in line with the average weighted prices in Texas County and well in other fields.

[fol. 535] Q. And probably double the weighted price being paid in Hugoton Field and in Oklahoma at the well?

A. In Hugoton field but in every field in Oklahoma.

Q. Well isn't it a fact that about the only companies who pay any considerably higher prices are companies who don't take any gas to speak of at all in the summer time?

A. I don't know that that is the case.

Q. You don't know whether it is or not?

A. No.

Q. Do you know of any company that takes gas regularly through the year that pays a weighted average of much more than four cents?

A. Possibly.

Q. In Oklahoma or any where else?

A. I know——

Q. This side of the Appalachian Mountains, I will put it?

A. I know companies that as a general rule pay more than four cents.

Q. I mean who takes gas regularly through the year not in unregular amounts.

A. I don't see that the time of year they take it has anything to do with it.

Q. I am asking you that question, and I want an answer.

A. Well I say that you can permit waste in the summer or winter, it doesn't make any difference on that score.

[fol. 536] Q. Anybody will pay a higher price in the winter when people need gas and they are shivering, but I am asking if a company that takes gas in large amounts and if it isn't a fact that they pay around four cents, the weighted average price?

A. If I understand the question Judge Cullison, practically all companies, except possibly Cities Service Gas Company —I think as a general rule—pay higher than four cents for gas.

Q. Most of the gas in Cement field is sold for 3½ cents?

A. East Cement Field.

Q. West Cement. I don't know anything about East Cement.

A. I don't think so.

Q. Isn't Ray Stephens Incorporated the largest taker there?

A. I don't think so, I think Cities Service Gas Company is.

Q. We don't produce there, I mean producers, not purchasers.

A. I don't believe they are the largest producers.

Q. But they sell us. Then you don't know then?

A. Don't know what?

Q. Whether the predominating amount is sold to us for around 3½ cents?

A. I think that most that you buy, you buy for three and a half cents.

Q. And we have taken out for the most of the gas out of the field haven't we?

A. You did for a long time I don't know now Judge.

[fol. 537] Q. I think you have accused us of——

A. You were taking the most gas out of the field at one time.

Q. Was there any waste there?

A. I think there was.

Q. Who wasted it?

A. Whoever produced it and sold it for that price.

Q. They wasted in a manner—because of the amount of money they received?

A. No sir.

Q. What other manner did they waste the gas?

A. Irreplaceable resources. It was vented and if it was or had of been worth ten cents a thousand, they would not have wasted it.

Q. We want all of that we can get at 3½ and 4 cents?

A. Sure you do.

Q. People made enormous amounts of money selling it at that rate?

A. I don't think so.

Q. You didn't ask those people whether they did or didn't?

A. Yes sir they said they didn't.

Q. Didn't you know that $750,000.00 sixteen inch pipe line from Oklahoma City to Cement field was paid out of the receipts of gas by Stephens in two or three years?

A. No sir, I didn't know that.

[fol. 538] Q. You understand that to be true?

A. If you say it is, I understand it to be true.

Q. That is quite a sum of money to take in?

Commissioner Armstrong:

A. Weren't they allowed two or three cents for the pipe line to liquidate the cost of that in addition to the cost of the gas Judge?

Mr. Cullison: They were not allowed anything more than three and a half cents for gas, if they advanced any money and collected it back, is that what you mean? I don't know their arrangements.

[fol. 539] Q. Mr. Pound, it is your duty as Conservation Officer to prevent waste of gas, is it not?

A. Yes, sir.

Q. You have never been called upon or voluntarily proceeded to act to prevent the waste of gas, in the Hugoton Field, have you?

A. Yes, sir.

Q. I thought you said there had never been waste of gas out there since you have been Conservation Officer?

A. Well, I don't know whether I said that or not,—no, I'm sure I didn't say there had never been a waste of gas out there.

Q. Since the order of the Commission was first enacted?

A. Well, I may have said that,—if I did I would like to modify that answer.

Q. Who was wasting gas out there?

A. Well, waste is a relative term, of course,—there is some venting of gas in that Field.

Q. Who is doing it?

A. Everybody who drills a well out there.

Q. In the course of drilling?

A. Yes.

Q. You mean unnecessarily?

A. Well, it's venting of gas that wouldn't occur if the price of gas was higher.

Q. Who has done that?

A. Well, Cities Service, Peerless——

[fol. 540] Q. Wait,—have you ever brought that to our attention?

A. I'm bringing that to your attention now.

Q. Have you ever notified Peerless who brought this suit against us for the purpose of recovering money and for whom you are testifying——

A. Just a minute,—I'm not testifying for Peerless against you,—I'm testifying for everybody in the State of Oklahoma.

Q. And you are a voluntary, eager, witness, aren't you?

A. No sir, I was subpoenaed here.

Q. I understood you were subpoenaed,—you couldn't get out of it.

A. Well, I didn't tell you that and I don't know who did.

Q. Well, maybe I drew the wrong deduction,—did you ever say anything to us about venting gas out in that Field?

A. I don't recall that I have.

Q. Did you ever say anything to Republic about venting gas in that Field?

A. Yes, I have.

Q. Well, did you ever see us vent any gas out there?

A. Not personally.

Q. You don't know that we ever did, do you?

A. Yes, I think I do.

Q. Don't give us hearsay,—of your own knowledge you don't know that we did, do you?

[fol. 541] A. I know men subject to my direction have told me so, and I believe it.

Judge Cullison: We move to strike that, as hearsay.

Chairman Bond: It isn't hearsay when the men are working under his direction,—overruled; exceptions allowed.

Q. You say that in every well we have drilled we have unnecessarily vented gas?

A. Well, I'll qualify that to this extent,—if you drilled that well in with cable tools or if you ever acidized it, then I will stand on my statement.

Q. I said "unnecessarily".

A. Yes, "unnecessarily".

Q. And you never said a word to us about it, did you?

A. I don't know whether I ever discussed it with any of your employees, or not, Judge.

Q. Well, if you have, name the person you complained to.

A. It wasn't a complaint, in the first place,—it was a discussion relative to conditions up there.

Q. Who did you ever accuse, in our Company, of venting gas? That's the first I ever heard of it.

A. It isn't an accusation, but merely a statement of facts relative to conditions that exist out there, and——

Q. Which one of our men——

A. You wait until I get through answering a question before you start another one. I'm not accusing your Com-

[fol. 542] pany of doing something that other people in the Field are doing too; but it would not be done, in my opinion, if gas were selling at ten cents instead of four cents.

Q. I don't know,—they don't know what we're getting for gas, do they? What me were wasting that gas?

A. I don't know whether they do or not, but if you were getting ten cents you would have seen that it wasn't wasted.

Q. Don't you know we're getting one and a half cents for gas out there?

A. No, I don't know that,—if you are it's too low.

Q. How much gas did we waste?

A. I don't know.

Q. Do you know of any amount you can name that we did waste?

A. I can name 1000 cubic feet.

Q. Where was it.

A. Give me one of your wells, and I'll tell you.

Q. Oh, you know, don't you.

A. I'll repeat what I said a while ago,—any well you drilled in with cable tools or any well you have acidized, and I know you have done one or the other.

Q. But, you say that under the circumstances it was necessarily done and that if circumstances had been different it wouldn't have been necessary.

A. That's right.

Q. We haven't done anything heretofore that might be [fol. 543] considered waste out in that Field, have we?

A. You have done what I consider waste.

Q. You mean in using cable tools?

A. I mean in venting gas.

Q. What kind of tools do you have,—you're a driller, aren't you?

A. No, sir.

Q. Don't you own or have an interest in a drilling outfit?

A. I do not.

Q. Never did?

A. Yes, I have had.

Q. What kind did you have?

A. I have owned an interest in both cable and rotary tools.

Q. And you have used these tools?

A. Yes.

Q. And it's a custom in the industry, isn't it?

A. Apparently, or they wouldn't be used.

Q. You know of no waste in that Field, except such as necessarily occurred, considering the use of the customary procedure in drilling wells in or in venting them, is that right?

A. It's necessary, probably, at the present price of gas.

Q. Well, if the price was 4½ cents, say the price is 4½ cents,—is it necessary?

A. Well, it isn't necessary, at all, because it isn't necessary to keep the price of gas where it is.

[fol. 544] Q. If it was five cents, is it necessary?

A. It isn't necessary at all.

Q. Well, you have just said it was necessarily done, considering conditions?

A. No, you're the one who said that.

Q. Didn't you say it was necessarily done, considering the price of gas?

A. I say it is the result of the price of gas.

Q. It is done as the result of the price of gas?

A. Yes.

Q. You mean the necessary result of the price of gas?

A. No, I don't think it is a necessary result.

Q. Then, the price of gas wouldn't cause it.

A. Yes, I think it does. I'll say it wouldn't be done if the price of gas was ten cents a thousand, in my opinion.

Q. Well, suppose it was nine cents a thousand out there?

A. I still think it would occur.

Q. There would be an economic waste of gas even at that price?

A. Yes.

Q. That is the only waste of gas, economic or otherwise, that you know of in that Field?

A. That's just waste, period.

Q. I say that's the only kind you have ever known in that field?

A. Well, that's the only kind there is.

Q. Where do you get that expression, "Economic Waste"?

[fol. 545] A. You're the one who has been using the term "economic waste", I haven't.

Judge Cullison: Oh, he (indicating Mr. Pruet) is the one who asked the question originally.

Mr. Pruet: We object to counsel telling the witness something.

Q. What is your definition of "economic waste"?

A. I don't have one.

Q. You couldn't give a comprehensive definition of "economic waste", could you?

A. Oh, if I were going to define it I would say it covers all kinds of waste.

Q. Now, Ted, have you read the statutes concerning your duty as Conservation Officer, and particularly Title 52 of the Session Laws of 1945, of Oklahoma?

A. I think I have, yes. I don't know whether I read it in that book, or not, but I have read it.

Q. Now, I will ask you if this sounds familiar to you, on the question of waste,—Section 85, on page 156, (counsel reads) "The term 'waste', as applied to the production of oil, in addition to its ordinary meaning, shall include economic waste",—are you familiar with that?

A. I have read that.

Q. Now, in the section on gas, Section 86, next following, (Counsel reads) "The term 'waste', as applied to gas, in [fol. 546] addition to its ordinary meaning, shall include the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply",—that's the definition as applied to gas——

A. You said "oil wells", or "all wells"?

Q. All right, I'm reading it,—do you understand what I have read so far? I said "oil wells",—do you understand it now?

A. Yes, I understand.

Q. (Reading:) "The inefficient or wasteful utilization of gas from gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion, or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing or releasing, directly or indirectly, into the open air, of gas from wells productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply." That's the end of the definition of "waste", because the [fol. 547] rest deals with the duties of the Commission. Do

you observe that nowhere in that section is "economic waste" mentioned?

A. I didn't hear you read it, if that's what you mean.

Q. And you knew that before, didn't you, that the expression, "economic waste" did not exist in the section dealing with the waste of gas, as defined in the Session Laws of 1945?

A. It isn't in there.

Q. You knew that?

A. Yes.

Q. And you knew it was included in the definition of waste in oil pools?

A. That's right.

Q. There is no oil in Texas County, so far as you know is there?

A. I know of no oil production in Texas County.

Q. Well, it is generally regarded as a dry gas field, isn't it?

A. From those horizons that those orders apply to.

Q. Well, those that are known?

A. That's right.

Q. And, so far as you know, it is exclusively that?

A. So far as I know.

Q. So this "economic waste" that you are talking about depending upon the price paid in the Field is something you have devised or thought of entirely aside from the Statutes of Oklahoma, is that right?

[fol. 548] A. Well, I don't know what you mean by "entirely aside" from.

Q. Well, don't you ordinarily know what that expression means?

A. No,—not the way you use it, I don't.

Q. You don't mean then that so far as any provision in the statute concerning gas is concerned that economic waste is to be considered by you or this Commission, at all, is that right?

Mr. Pruet: We object to his asking this witness to construe the Statutes of the State of Oklahoma.

Chairman Bond: Sustained. Exceptions allowed.

Q. Ted, why do you draw the line at ten cents, instead of at twelve or fifteen?

A. Because it has been my experience in the twelve years I have been in this Commission, and from reading the his-

tory of the gas industry and the oil industry in the records of this Commission and of other States, that when gas is sold for a price of ten cents or more there has not been waste, or at least not to an appreciable degree and when it was sold below that there has been, and I would say that's the minimum.

Q. So it is merely a co-ncidence, so far as your observation goes, that causes you to deduce that relationship between the two, is that right?

A. I don't know what you mean by "coincidence", as you use it, but that's an opinion I have formed.

Q. (last question propounded is read to the witness.)

A. No.

[fol. 549] Q. Mr. Pound, it has been brought out in this case that the reserve per acre in the Hugoton Field is about 12,000,000, is that approximately correct, or do you know?

A. Those figures I have seen a number of times, by most experts.

Q. Well, it is something around that, isn't it?

A. I think so, yes.

Q. Now, it has been computed that at four cents per thousand the ultimate gross recovery from a section of land at that price would be $307,000.00,—at eight cents it would be $714,000.00, and at ten cents it would be approximately—I can't multiply——

A. It would be $867,500.00.

Q. Now, would the fact that there may be recovery of that amount of money in gross for, from, a given section, if it got its share, have anything to do with your opinion as to economic waste?

A. It doesn't have anything to do with my opinion that gas ought to be a higher price,—no. I am interested in how much gas is recovered.

Q. In other words, we assume that considering the gross, an ordinary cost of drilling a well, $120,000.00, around that figure, add around $640.00 more for the acreage, a carrying charge of $640.00 a year for the term it has been carried so far, would result in an enormous profit to the producer,—something on the order of a million dollars, at 10 cents,—seven hundred thousand at eight cents, or $307,000.00 at four cents,—would that in any way change your mind as to the point at which the sale of gas at that price would become economic waste?

[fol. 550] A. I don't care how much profit you make, in fact the more that a company make- the better it suits me, the more profit they make the better it suits me.

Q. Would the fact that it was brought out in the computation by Mr. Mayfield, would sitting as a witness for the State Land Commission—this four cents per thousand cubic feet on an estimated reserve of twelve million cubic feet per acre, the gross overall return from such a venture would be $307,000.00 on an investment of around $20,000.00 to the well and equipment $640. annually for the lease for the duration for which it has been paid and assuming up to ten years making $6400.00 for the rentals that the gross return would be $307,000, do you still say that four cents is not a high enough price in view of that profit to induce the conservation of gas?

Earl Pruet: We object to that because it is assuming facts in evidence.

Chairman Bond: You will prove those facts.

Mr. Cullison: Yes, I think we will.

Walter Marlin: Did you say gross returns?

Mr. Cullison: Yes.

Walter Marlin: How do you distinguish that from profits?

A. In the first place how much profit someone makes is not what I am interested in except as it effects Conservation or prevention of waste of natural gas. If the operator or producer and the purchaser want to go together, and as far as the seven-eights interests, if I were a royalty owner and I am not, that would make a big difference for the price to be higher and more gas will be recovered.

[fol. 551] Q. You mean the higher the price the more will be recovered from the reservoir?

A. Yes, if you reach a high enough price.

Q. So then that in the sense that it would be abandoned at a higher pressure, abandonment figure, if the price is low is what induces you to say that low prices causes economic waste?

A. Low prices cause waste, I don't say economic waste, but that is one of the things that results.

Q. You know perfectly well that that would prevent us and all other pipe lines from making the majority of the natural gas industrial sales that we are now making?

A. No, I don't, as a matter of fact, I think the higher field price out there is the best thing for the Cities Service Company.

Q. For the direct industrial sales?

A. Overall picture?

Q. I am talking about direct industrial sales.

A. I am talking about everything.

Q. Don't you think that it would destroy all of the direct industrial sales not only our company, but every other company dependent on gas from the Hugoton Field?

A. No, I don't know that and I don't think it will.

Q. Alright tell me how we could sell gas for the Army Training School at Amarillo Texas to the Government if [fol. 552] we had to pay ten cents for that, it can't be done.

A. You could buy gas—but you couldn't buy gas for ten cents and sell it for five cents and stay in business, I assume that you wouldn't.

Q. I guess we could quit?

A. You could get more money for it.

Q. And loose that business?

A. You could either quit selling or make more money for it.

Q. You feel sure that kind would compel the people in other states to pay enough more money for us to continue in business of direct sales?

A. I don't think that will compel you to do anything and they are not compelled to buy at five cents.

Q. And as a business proposition you don't think that we will have to continue in selling to the Government at the American Training school at five cents or to the Smelters at Blackwell for seven cents or at the Wichita, Kansas, base at six cents or to others for seven and three-quarters cents or to Spencer Chemical Company where we sell from ten to thirty million feet a day at approximately ten cents and to the Kansas City Power and Light at Kansas City, Missouri, or to the distributors for them at around ten cents, you know as a matter of business and from your common knowledge and experience that we couldn't continue such sales if we pay ten cents in the Hugoton Field?

[fol. 553] Earl Pruet: I object to that because it takes in the entire United States.

Chairman Bond: You may proceed, I don't know what this has to do with it.

A. Well, I will answer it this way, What would you do if the Commission shut the field in and you didn't have any gas to sell then at all?

Q. I asked if we continued these industrial sales if we sell it for less than ten cents, how can we buy it for ten cents?

A. I don't know, I don't know what your financial structure is.

Q. We couldn't do it unless we make enough profit, unless assuming that the only other avenue of recouping the loss from the sales that are lower than the price we pay is a regulated business composed of the sale in interstate commerce for gas for resale and that we are allowed a profit on that for only six and a half percent and that this trial period constitutes more than fifty percent of our business, then would there be any possibility of us continuing those sales in these amounts at those prices and with the purchase price at ten cents in the Hugoton Field?

Earl Pruet: We object to that because the man is not an economic expert and the question is based on facts not in evidence.

[fol. 554] Walter Marlin: I would like to know how much of that is produced by your own company and how much of or how many producers are in the subsidiary of the Cities Service Company, I want to know how much profit you ultimately make out of it?

Mr. Cullison: ——to the witness: Have you answered my question?

A. I have not had an opportunity.

Earl Pruet: I want to object to that—that they are entitled to make six and a half percent.

Mr. Cullison: Six and a half percent on the regular business in general.

Earl Pruet: You haven't had any trouble up to the present time.

Mr. Cullison: Every gas company operating in Kansas and depending alone on gas and operating in Kansas only and constituting——

Earl Pruet: If the Commission please, we object to his testifying about Kansas, it's not in evidence and he is not sworn.

Chairman Bond: Go ahead, gentlemen, proceed with the case.

Q. Do you remember what I asked you?

A. I think I remember the question.

Q. If you know whether we could continue the sales?

A. I think that your are entitled to make a profit and from what you are assuming—selling gas for at the other [fol. 555] end is too low to permit you to pay ten cents per thousand at the wellhead then what everyone will expect you to do is to charge enough so you can pay ten cents a thousand cubic foot.

Q. So that it will depend on the ability of the company in question?

Commissioner Armstrong: These low prices that you made in natural gas, were they set after the Federal Power Commission hearing? After they reduced your price, was it before or after?

Mr. Cullison: Most of them before, some of them after, a very few I think.

Walter Marlin examines the witness:

Q. Mr. Pounds, I believe you testified on direct examination that in your opinion the price of gas in the field had a direct relationship to conservation?

A. I did.

Q. As I recall—on cross examination, Judge Cullison asked you if you knew of any waste in the West Cement Field and you indicated that you did?

A. That is right.

Q. You didn't tell the conditions there, I wish you would now relate to the Commission, what you say constituted waste in that field?

[fol. 556] A. The conditions that existed in the Cement Field, West Madrano Pool, where enormous quantities of gas were being produced and sold in that field, like all years —1941 to 1942, the controversy about it was present when I became Conservation Officer, during the year 1942 a rather exhaustive study of the situation was made an- this situation existed in that pool—we studied it pretty thoroughly in our department in cooperation with the Bureau of Mines and the operators over there. The most of the gas, seventy-five percent of it was being sold at the well-head at three or three and a half cents per thousand that was going to the Cities Service Gas Company. The condition was we found that there was an attempt to reconcile lower prices

paid by one company than was paid by other companies for example——

Mr. Cullison: An attempt what—

A. An attempt to reconcile the prices paid at the well head by increasing the volume, in other words wells selling gas for three and three and a half cents were attempting to make up the difference in four and five and six cents paid by purchasers by taking more gas from the wells that was selling for a lower price and destroying ratable take and as a result of that, there was waste of gas which was brought about by that original condition. For example: It was subsequently determined that what had been originally a dry gas field was in reality a gas cap on an oil [fol. 557] field. I have heard no one that will dispute this statement, that waste accrued in that reservoir because of the enormous amount of gas that was sold, the amount which has since been ordered by this Commission to be reduced because it caused oil to migrate up into the area that was formerly occupied by the gas cap and resulted in actual physical underground waste of that oil and also effected correlative rights in the field, there now exists in that field some venting of gas produced with the oil produce from this common source of supply—this common reservoir because the price paid in that field will not justify the compression of that gas to put it into marketable channels—all of these conditions resulted in waste in forms that can not be remedied.

Walter Marlin: You think that low price contributed to that?

A. Yes.

Walter Marlin: And you had those things in mind when you stated your opinion to the Commission this afternoon?

A. Yes.

Earl Pruet: Who is buying the most gas out of one well?

A. Cities Service Gas Company.

Earl Pruet: Others are paying five and six and they three and a half cents?

Mr. Cullison: It's immaterial as to contracts between persons and what they are paying.

[fol. 558] Earl Pruet continues with the witness:

Q. As I understand your testimony, the price in the Hugoton Field, five cents is the highest price being paid and that is for gas for carbon black?

A. Yes.

Q. Is that considered in the industry as an inferior purpose and has that been held by the Supreme Court as economic waste?

A. It is under certain conditions.

Q. With reference to the gas that has been vented in the Hugoton Field and in the process of being completed—the process of completing a well and where acidization has been effected, as I understand it, if the price of gas is higher that measures of gas would have been taken to save the gas vented in those processes.

A. Yes, if 1000 cubic feet of gas were vented, if it was worth one dollar per thousand there is no one going to blow one thousand dollars into the air if they realize what they are doing.

Q. If gas is worth ten cents per thousand feet, cubic feet would that gas have been vented?

A. I don't think so.

Q. As I understand your theory that the sale of gas at less than ten cents per thousand cubic feet results in waste but a higher price causes the operators to save the gas?

[fol. 559] A. That is my opinion.

Mr. Cullison: We object to that leading question.

Earl Pruet continues with the witness:

Q. State whether or not in your opinion the present low prices prevailing in the field will be conducive to the abandonment of the field to a higher or lower abandonment pressure?

A. I think that the low prices will result in abandonment at a higher abandonment pressure.

Q. Then state whether or not the low prices will, whether or not it will, in your opinion result in the recovery in a lessor or greater ultimate recovery in that field?

A. I think that low prices will result in abandonment of the wells and the pool at a higher pressure and will therefore result in a lower ultimate recovery of gas. If that reservoir and wells are abandoned at one hundred pounds

there will be twice as much gas left in the reservoir as at fifty pounds.

Mr. Cullison: That is the only reason and fact upon which you base your conclusions that there is economic waste?

A. I didn't say anything about economic waste?

Q. Oh, physical waste?

A. Yes, sir.

Q. If you don't get enough money, you might waste it, is that it?

A. Yes, sir, if the price were high enough, a vacuum might be applied and all the gas recovered.

[fol. 560] Q. That would be stronger, the incentive to take every foot out of the field and to save every foot. The higher price you got, clear up to one dollar per foot would help?

A. That is probably true.

Q. So to get the greatest ultimate recovery you would get the greatest price—that could be gotten in the country?

A. I would recommend a price that will permit the owners of their gas to produce all of it at a greater profit.

Q. And the greatest price will produce the greatest result?

A. Not necessarily.

Q. The greatest price that it could be commercially used?

A. We will assume that he will use it because otherwise he will have no reason to produce it.

Q. Yes, but for the purpose of ceramic they would pay a very high price?

A. I don't think that has anything to do with it.

[fol. 561] Q. Then, to follow your theory, you would have to devote the gas only to the use that would justify the higher price, is that right?

A. No, sir. I will explain that if you want me to.

Q. You couldn't sell industrial gas any longer at the price it is being sold over the Mid-Continent, at ten cents, could you?

A. I think you could.

Q. Isn't it a fact that industrial gas is sold at competitive prices with other fuels?

A. It is sold at competitive prices with other gas, sometimes.

Q. When higher gas is sold?

A. Well, sometimes you are competing with no other fuel except gas,—just two gas companies bidding against each other.

Q. When it's cheaper for the consumer to use other fuels he will not ordinarily buy gas, will he?

A. I don't agree with that statement.

Q. Don't you know companies cut off natural gas lines time and again; because they can operate cheaper on coal?

A. No, I don't assume they——

Q. You have assumed, for the purpose of your testimony that that was not a fact?

A. I don't assume, at all——

Q. You think you can sell gas at a radically different price above the price of fuel oil and coal, do you?

A. I didn't say that.

[fol. 562] Q. Well, do you think you couldn't?

A. I think you can sell gas of the same BTU content at a higher price than you can sell other fuels.

Q. How much higher?

A. I don't know, but I'll say you can pay ten cents at the wellhead for it——

Q. Answer the question,—how much higher?

A. The difference between five and ten,—five cents higher, —the difference between what is now paid at the wellhead and what would be paid if it was ten cents.

Q. You think it can be sold five cents higher than it is, everywhere?

A. I say you can pay ten cents at the well head and make your profit, ten cents per thousand cubic feet at the well head,—it has been done.

Q. I'm talking about the sale of gas in competition with the other fuels,—you think that because it is gas it could be sold five cents higher per thousand cubic feet——

A. If it is necessary,—I don't think you're going to have to, but you could add something on the other end. I don't agree—I say if it is sold at the wellhead for ten cents you can pay that and make a profit.

Q. Then you don't think it ought to be sold at the wellhead,—you think sales for less than ten cents at the wellhead ought to be discontinued?

[fol. 563] A. I think it should sell for ten cents per thousand cubic feet at the wellhead.

Q. Well, on your theory of conservation and economic waste all sales at the wellhead ought to be discontinued until they can be made at ten cents?

A. I am not confining it to economic waste.

Q. You are not?

A. I am not, but all sales of gas at the wellhead, for less than ten cents a thousand cubic feet, in my opinion, constitutes waste.

Q. You're getting off the subject, I'm talking about the sale of gas in competition with other fuels,—now, you have said that you don't think these sales ought to be continued.

A. Wait a minute, I didn't say that.

Q. Well, do you think they ought to be continued?

A. I have no opinion on whether they ought to be continued or not, and if you are asking me whether I have any objection to the use of gas as a boiler fuel, I have not.

Q. What uses do you say gas must be devoted to, in order to avoid waste?

A. I didn't say any use,—I will say this,—that I'm willing to pay more for gas I use in my home if it will increase the price at the well, if that is necessary to affect the price at the well.

Q. Well, you're not authorized to speak for the many [fol. 564] consumers of gas in Oklahoma, are you?

A. I'm authorized to speak for this one,—me.

Mr. Pruet: I object to that question, along with the others on this line, not tending to prove any issue in the case.

The witness: And I'll adopt Mr. Pruet's objection.

(No ruling.)

Q. Can you tell this Commission any way that Cities Service Gas Company or any other Company could continue to make the sales of gas I have mentioned heretofore, at the prices I have mentioned, and pay ten cents at the well, in Texas County?

A. I don't know how much profit you're making in between——

Q. I asked you (last question read to witness).

A. If you will give me certain information on your financial structure, your earning capacity, and——

Q. How much profit would you make on gas you pay ten cents for at the well and sell for five cents at the Army School in Texas,—there would be a five cent loss, wouldn't there?

A. There would be on that individual sale.

Q. I have detailed certain sales and have vouched to the Commission that proper evidence of these sales would be submitted,—can you give this Commission any plan whereby those sales, at those prices, can be continued and ten cents paid at the well?

Mr. Pruet: We object to that as repetition.

Chairman Bond: He said give him your financial structure, earning capacity and possibly some other information [fol. 565] and he could tell you whether or not you could sell gas at those prices and make money still.

Judge Cullison: I'm asking him if he can give a plan.

Chairman Bond: He might say no, unless you give him the facts, but he hasn't said it.

By the Witness:

A. I will say it now.

Q. You don't believe such a plan can be devised by anybody, do you?

Chairman Bond: The Commission is going to rule that he can't answer as to what somebody else might be able to do,—he may know what he can do.

Q. Could you do that,—pay ten cents at the well and make the sales at the different places I have named, at the respective prices as to each sale, at a profit, show a profit?

A. What are those respective prices again?

Q. Six cents at Wichita, Kansas, to Kansas Gas & Electric; five cents to the United States Government, at the Army Training School at Amarillo; approximately ten cents to Spencer Chemical Company, Pittsburg, Kansas; approximately seven cents at the smelter at Blackwell; approximately ten cents and not to exceed eleven cents at Kansas City Power & Light Company, Kansas City, Missouri,—do you want the quantities or just the prices?,—approximately seven and three quarters cents to Phillips in the Burbank Field——

Mr. McBee: I want to object to that question, unless he gives the amount he pays for gas.

[fol. 566] Judge Cullison: The assumption is it is ten cents.

Chairman Bond: The witness has told you, "I can't answer that question unless you give me certain information"

Mr. McBee: I am going to object to the question unless they tell us those facts——

Chairman Bond: Objection overruled,—the witness will answer as he did before, I assume.

Judge Cullison: I am asking him, as the Judge suggested, whether he could do that.

By Witness:

A. I can, if you will give me a lot of other facts,—your financial structure, how much money you've got,—if you have enough money you can do it for a while, and there is one other fact that enters into it,—if you buy your gas at a high enough pressure where you buy it and sell it at low enough pressure where you sell it, you can do it.

Q. How can you do it?

A. By doing that,—what I just said.

Q. Now, assuming it is bought at a pressure of 16.4 or two pounds above the so-called pressure—, and sold at 14.4 plus ten ounces, how much difference would that make in volume?

A. I would say approximately nine per cent.

Q. All right,—assuming that that is done and you have nine per cent advantage, no leakage, no lines broken where gas is lost, then how could you make those sales and pay ten cents at the wellhead?

[fol. 567] A. The Federal——

Q. Add to that "at the prices I have detailed."

A. The Federal Power Commission has said you could make only six and one-half per cent, and on that basis you are making nine. I don't know how much you're making on all the gas you sell, industrial and domestic.

Q. The question is,—how could you do that?

A. I don't know whether I could or not until you give me the information I have asked for. I have told you that four or five times.

By Vice-Chairman Weems:

Q. Mr. Pound, I am sure you know the Rules and Regulations of this Commission,—I am sure you know the Commission would not permit you to own a drilling rig or any tools of any kind,—I am sure you know the Commission wouldn't permit any of your deputies or anyone connected with this office to have a set of tools, don't you?

A. Well, I know I don't have any.

Q. Well, that condition wouldn't be permitted and you know that fact is generally known to the oil and gas industry throughout the State of Oklahoma,—that you or none of your men could, either directly or indirectly own, operate or have an interest in any of such property,—the questions asked you by counsel insinuate that you do own some of such tools,—do you know why he thought you owned any of such tools?

A. I do not, unless he has been told by somebody else.

Judge Cullison: He admitted he owned them.

[fol. 568] A. (Mr. Pound:) I did not,—I said I had in the past.

Judge Cullison: Just how long in the past?

A. Before I went to work for this Commission,—and now I want to say something else,—I didn't come in here to take any personal side in this dispute between Peerless and Cities Service,—I was asked by Mr. Pruet if I would testify in this case, and I told him I would rather he would subpoena me if he wanted me to testify, and I don't think there is anybody in the State of Oklahoma who knows me and knows my position on conservation who has any question or any doubt about how I feel about the price of gas at the wellhead, and have felt for many years. I have written it and publicaly stated it innumerable times, on innumerable occasions,—no matter whether it was Cities Service, Peerless, or who might be interested or involved, I would still feel the same way. That is my opinion, based on my experience and what little knowledge I have as to the effect of price on conservation. I think a high wellhead price——

Judge Cullison: I don't think this ought to go into the record,—I don't object to listening to him, but——

Chairman Bond: Judge, I think he is entitled to put it into the record,—you objected to his reading from his papers,

which, he says, are evidence of his position on this question in years past, and I think he is entitled to have his testimony in the record, especially since you accuse him of being prejudiced.

Judge Cullison: Well, I know very well that one of the [fol. 569] rules of evidence is that on cross-examination counsel is permitted to sift the facts in order to show the interest of the witness,—isn't that fundamental?

Chairman Bond: That's fundamental but it is not proper to accuse him of——

Judge Cullison: I didn't accuse him of anything,—I asked him the question, I thought he owned a drilling rig, because I have heard it so often,—I don't think there would be any harm in his owning one. If I were him I would own one if I wanted it.

Chairman Bond: You have, in addition, objected to his reading from his written opinion and you have objected to his testifying in the case——

Judge Cullison: Well, I might be mistaken about that, but I do think it is against public policy. And I didn't know what he was going to read.

Mr. Pruet: Now, I want to ask that the documents from which he attempted to read be marked as exhibits 55 and 56, respectively, and I offer them in evidence.

Judge Cullison: We don't want to encumber this record, unnecessarily,—in order to prevent doing that we will admit that he has been of that opinion for several years.

Chairman Bond: Let the record so show.

Mr. Pruet: Now, I have another exhibit, which is a form of contract submitted by Cities Service Gas Company for execution and which has been marked Exhibit 58. (Offered later.)

[fol. 570] By the Witness: I want Judge Cullison to understand that I am not here taking sides in this argument between Cities Service and Peerless and——

Judge Cullison: Well, you have answered that.

Mr. Pound: I want to answer it some more.

Judge Cullison: We object to this going into the record.

Mr. Pound: May I answer it completely, Judge?

Chairman Bond: You may answer.

Judge Cullison: Exceptions.

By Mr. Pound:

A. You inferred that I was biased and prejudiced in this case,—I am not. I am merely stating my opinion as to the price of gas at the wellhead, its relation to conservation and waste of gas and I don't care what parties are in here litigating nor which side of the question either one of them is on,—that's my opinion and it is my opinion that the welfare of the entire State of Oklahoma is involved here and that is the reason I have stated what I have.

Judge Cullison: I don't think this ought to be in the record,—I asked him if he owned a drilling rig,—I thought he did,—I certainly was so informed, from many sources. I don't see anything wrong with it but if he had said he did I was going to ask him if he was drilling for the Peerless Oil and Gas Company.

Mr. Pruet: He is not.

Chairman Bond: If he was permitted to own or operate a rig this Commission would be asked, "Are you going to [fol. 571] permit your employees to be in the drilling business", and——

Judge Cullison: I don't know anything about that and I didn't know of that rule of the Commission,—I didn't know what your rule was.

By Mr. Pound: Why did you bring it up then?

Judge Cullison: It would show your business attachment——

Mr. Pound: My relationship with Peerless is the same as it is with your Company.

Vice-Chairman Weems: Mr. Cullison, as one member of the Commission I feel and I believe the whole Commission feels an apology in open court is due Mr. Pound.

Judge Cullison: On the theory that I should know your rule? I did not know your rule when I asked the question.

Vice-Chairman Weems: Are you now willing to apologize to Mr. Pound for the insult?

Judge Cullison: There was no insult.

Vice-Chairman Weems: Yes, there was,—the Commission feels there was an insult.

Judge Cullison: I don't care about an apology,—so far as I am concerned, if the Commission feels that I have transgressed the proprieties or amenities of your rules of procedure I am willing to apol-ize,—certainly. I am very

sorry and I will say I was honestly wrong as to his owning a drilling outfit——

Mr. Pound: Don't keep referring to a drilling outfit I [fol. 572] own,—I hold you I don't own one.

Judge Cullison: Well, he said he used to own one. I see nothing wrong in it and the only object I had was to ascertain whether he had drilled for Peerless and if he had that would possibly give him some interest in behalf of Peerless, more interest than in behalf of Cities Service Gas Company.

Chairman Bond: That's the very thing that makes it improper for a Conservation Officer to own a drilling rig,—because he could be in position to favor one operator over another.

Judge Cullison: Well, I am willing to withdraw, if it will help the situation, all reference to it,—he has denied he owned it.

Mr. Pound: I haven't denied anything,—I said I didn't own one.

Vice-Chairman Weems: I think the apology is sufficient.

Judge Cullison: I don't want to transgress your rules,—I was honest in it, nor do I wish to insinuate, unless I have the proof, that anyone has violated any rule.

Mr. Pruet: A man shouldn't ask a question of that nature unless he knew he could prove the fact if the witness denied it. The Code of Ethics provide that he shouldn't ask such question of a witness unless he knows he could prove the fact if the witness denied it.

Judge Cullison: I didn't know it,—you don't ask things you know, you ask for information. I have practiced law a [fols. 573-574] long time and I am sensitive about violating any of the proprieties in court.

Mr. Pruet: I have another exhibit, 58, which is a type of contract submitted by Cities Service Gas Company, which they say is the type of contract they submit and execute in that Field. We offer Exhibit 58 in evidence.

At this point the time available for consideration of this case has expired and the further hearing of this case is continued to September 9th, 10th, 11th and 12th, 1946.

[fol. 575] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING CAUSE—Filed July 13, 1946

Now on this the 9th day of July, 1946, the above styled cause came on for further hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma. Testimony was introduced on behalf of the Petition in Intervention filed herein by the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, on the 9th, 10th and 11th days of July, 1946.

At the conclusion of the hearing on July 11th, it was announced that the Commission would be unable to finish the hearing on that day and that the cause should be continued to some future date for final hearings. It was agreed by the interested parties that the cause might be continued to September 9th, 10th and 11th, 1946, and be further heard at that time.

ORDER

It Is Therefore Ordered that the cause be and the same is hereby continued from July 11th, 1946 to September 9th, 10th, and 11th, 1946, with the hearing to begin on September [fols. 576-577] 9th, at 10 o'clock, a. m.

Done and Performed this 11th day of July, 1946.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner. (Seal.)

Attest: Tom McMurray, Secretary.

[File endorsement omitted.]

[fol. 578] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE TO ALLOW INSPECTION AND COPY, OR PERMISSION TO TAKE COPY—Filed August 10, 1946

To Peerless Oil and Gas Company, a Corporation, Applicant, and Its Attorneys of Record, Richardson, Shartel, Cochran and Pruet, Attention Earl Pruet, 1133 First National Building, Oklahoma City 2, Oklahoma:

The Respondent, Cities Service Gas Company, hereby demands of you permission to inspect, and to take copies of the following books, papers, or documents now in your possession relating to the merits of the above entitled action and pertaining to the judicial issues as disclosed by the pleadings, to-wit:

(a) Check showing amount paid W. E. Benson as consideration for assignment of oil and gas lease from W. E. Benson to Peerless Oil & Gas Company covering Northeast, Southeast, and Southwest Quarters (NE¼ SE¼ SW¼) of Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, and receipt issued in connection therewith.

(b) Check showing amount paid to Skelly Oil Company as consideration for assignment of oil and gas lease from Skelly Oil Company to Peerless Oil and Gas Company, covering Northwest Quarter (NW¼) of Section 8, Township 4 North, Range 16 E. C. M. Texas County, Oklahoma, and receipt issued in connection therewith.

[fol. 579] (c) Checks and receipts showing all rentals paid by Peerless Oil and Gas Company since it acquired ownership of oil and gas leases covering Section 8, Township 4 North, Range 13 E. C. M., Texas County, Oklahoma.

(d) Checks, receipts and records of Applicant showing all costs, expenses, and disbursements by Peerless Oil & Gas Company in connection with the drilling, completing, equipping and making ready for production the gas well of Applicant in Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

(e) All papers, documents, and records of Applicant showing complete investment, cost and expense of Peerless Oil & Gas Company in acquiring the oil and gas leases owned by it in Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, and the drilling, completing, equipping, and making ready for production its gas well thereon, and

If the same is refused for four (4) days from this date, you are notified that the Respondent, Cities Service Gas Company, will apply to the Corporation Commission of the State of Oklahoma in the above entitled action pertaining to the judicial issues there involved for an Order compelling you to allow such inspection and copy.

Dated this 2nd day of August, 1946.

Cities Service Gas Company, Respondent, by Joe Rolston, Jr., One of Its Attorneys of Record.

Service of the foregoing notice is hereby accepted and [fols. 580-581] *and* acknowledged for Applicant, this 2nd day of August, 1946.

Peerless Oil and Gas Company, by Earl Pruet, One of Its Attorneys of Record.

[File endorsement omitted.]

[fols. 582-583] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

RESPONSE TO APPLICATION FOR ORDER COMPELLING INSPECTION OF RECORDS—Filed August 14, 1946

Comes now the Applicant, Peerless Oil and Gas Company, and for response to the application of Cities Service Gas Company seeking an Order of this Commission compelling Peerless Oil and Gas Company to allow an inspection of its records and for response to said Application, states that said Order should not be granted for the reason that the information, matters and things referred to in said Application and Notice heretofore given are incompetent, irrelevant and immaterial and entirely aside from the issues involved herein to-wit: application for the fixing of a

minimum price in the Guymon-Hugoton Oklahoma Gas Field in Texas County, Oklahoma, as a conservation measure to prevent waste and to promote conservation of a natural resource to-wit: natural gas.

Wherefore, Peerless Oil and Gas Company prays that the Application of Cities Service Gas Company for an Order compelling Peerless Oil and Gas Company to allow an inspection of its records be by this Commission denied.

Richardson, Shartel, Cochran & Pruet, by Earl Pruet,
Attorney for Applicant.

[File endorsement omitted.]

[fol. 584] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ANSWER OF RESPONDENT CITIES SERVICE GAS COMPANY TO PETITION IN INTERVENTION—Filed August 15, 1946

Comes now respondent Cities Service Gas Company, and without waiving any of its objections heretofore made and urged to said Petition in intervention, and to the Commission allowing the Application to Intervene, and authorizing the filing of its said Petition in Intervention without giving Respondent Notice or an opportunity to be heard thereon and oppose the granting of the same, states:

1. Respondent specifically denies that Intervenor has any interest in the judicial phase of the above entitled proceedings; specifically denies that Intervenor owns or has any interest in said Section 8, more particularly described in the Application filed by Peerless Oil & Gas Company either as royalty owner, landowner, lessee, or otherwise; specifically denies that there is "a very limited market" in the Guymon-Hugoton Pool; specifically denies that there now exists or ever has existed in said pool arbitrary [fol. 585] and monopolistic prices, practices and measurements for gas put into practice by producers and purchasers, or anyone else; specifically denies that gas is now or has been a distress commodity in said Pool; specifically denies that any waste, economic or otherwise, is now being

committed, practiced or allowed in said Pool; and specifically denies that there is no market price, prevailing price, or going price for gas in said Pool at the wellhead, or in the Field.

2. Further answering herein Respondent says that it is without knowledge as to the correctness of the allegations purported to be set forth in Intervenor's Application to Intervene, as the same has never been served upon Respondent and it has no knowledge of the contents thereof; that Respondent is without knowledge as to the correctness of the number of acres or extent of land owned by Intervenor in trust in Texas County, Beaver County, Cimarron County, or other counties of Oklahoma; that Respondent is without knowledge of the balance of the allegations contained in Intervenor's Petition in Intervention, and by reason of the foregoing and being without knowledge as to the correctness of the foregoing matters in this paragraph contained, Respondent denies generally each and every other allegation, matter, averment and thing set forth in said Petition of Intervention, and states that Intervenor should be put upon strict proof as to any and all such allegations and the correctness thereof.

3. Further answering herein Respondent hereby adopts [fol. 586] by reference all of the written Answer it has heretofore filed in this proceeding to the Application of Peerless Oil & Gas Company, and makes each and every allegation, averment, fact, matter, thing, denial, objection and motion contained in such Answer a part of this Answer as fully and completely as if herein fully set out at length.

4. Further answering herein, Respondent alleges that there is a going, market and prevailing price for natural gas at the wellhead and in the field in the Guymon-Hugoton Pool in Texas County, Oklahoma; that the market, going and prevailing price for natural gas at the wellhead in said Pool is 4¢ per MCF measured on a pressure base of 16.4 pounds per square inch at a standard temperature of 60° Fahrenheit, and that the market, going and prevailing price in the field for pipeline delivered gas is 4½¢ per MCF measured on a pressure base of 16.4 pounds per square inch at a standard temperature of 60° Fahrenheit.

5. Further answering herein Respondent alleges that under the laws of Oklahoma the lessee is the owner of all

natural gas underlying the surface of any land covered by an oil and gas lease. That an oil and gas lease covering land in Oklahoma containing the usual provisions such as are contained in the oil and gas lease covering land in the Guymon-Hugoton Pool, and particularly the acreage of said Section 8 heretofore referred to, create in the lessee a present interest or estate in the real estate covered thereby; that an attempt by this Commission to fix the price of gas "as in the sands and in the common reservoir [fol. 587] before being removed" in the Guymon-Hugoton Pool in Texas County, Oklahoma, or in said Section 8 referred to aforesaid, as requested by Intervenor in its Petition, is beyound the authority and jurisdiction of this Commission under the Constitution and Laws of the State of Oklahoma. That any attempt to fix such price in the sands and in the common reservoir by this Commission would affect the title of the lessee and limit his estate in said lease; that the venue of any action involving or affecting the title to real property lies only in the county wherein such real property is located, and that by reason of the averments in this paragraph contained the venue of any action or proceeding to fix the price of gas in the sands and in the reservoir being an action or proceeding relating and pretaining to real property and affecting the title thereto, lies in Texas County, Oklahoma, and under such circumstances this Commission has no jurisdiction of the subject matter or authority under the Constitution or laws of this state to grant the relief prayed for by Intervenor in this proceeding.

Wherefore the premises considered, Respondent Cities Service Gas Company prays that Intervenor be denied any and all relief requested by it in said Petition in Intervention, and that the same be dismissed.

Cities Service Gas Company, Respondent; by Glenn [fol. 588] W. Clark, R. E. Cullison, Joe Rolston, Jr., Its Attorneys of Record, First National Building, Oklahoma City, Oklahoma.

8-15-46. Copy received, W. D. McBee.
8-15-46. Copy received, Floyd Green.

[File endorsement omitted.]

[fol. 589] BEFORE CORPORATION COMMISSION OF OKLAHOMA

Reporter's Transcript of Hearing

And now on this 9th day of September, 1946, this date having heretofore been fixed by the Commission for the further hearing of said cause, all parties being present by their respective counsel, the hearing of said cause is resumed and the following proceedings are had and done, to-wit:

Chairman Bond: The Commission has before it this morning CD-1054, Peerless Oil & Gas Company versus Cities Service Gas Company, Petition in intervention by the State of Oklahoma on relation of the Commissioners of the Land Office of the State of Oklahoma. Are you ready gentlemen?

Mr. Pruet: The Applicant is ready.

Mr. Ralston: Ready.

Mr. McBee: Commissioners are ready.

Mr. Pruet: I thought I had introduced the oil and gas leases involving the sections,—I checked and find I did not. Will you agree we own valid and subsisting leases covering the sections? If not, I would like to reserve the right to introduce photostatic copies of the leases and the assignments.

Mr. Cullison: Well, we are interested in one phase of it,—the costs. I don't know whether they appear.

Mr. Pruet: I have here a statement from my company as to the costs of the leases which I will furnish you if the [fol. 590] Commission holds that has any bearing in this hearing.

Mr. Cullison: We don't deny you own them. No, that's right.

Mr. Pruet: Let the record show it is stipulated by and agreed between the parties that the applicant owns valid and subsisting oil and gas leases covering all of section 8, township 4 north, Range 16 ECM, Texas County, Oklahoma, and we rest.

APPLICANT RESTS

Mr. Ralston: May it please the Commission, as I understand the statement made by Mr. Pruet, the applicant rests?

Mr. Pruet: That's right.

Mr. Ralston: We would like to know at this time whether the intervenor rests too?

Mr. McBee: I might state, I am not familiar enough with your practice but we have had served on us the answer of the Cities Service Gas Company and if it is necessary to reply in form I would like to preserve that right. I haven't prepared a reply to the answer. I can prepare that sometime today and file it, if it is required. I'm not sure that it is necessary.

Chairman Bond: It isn't necessary but you can determine yourself whether or not you think you ought to reply. [fol. 591] If you do, the Commission will give you today to reply in.

Mr. McBee: The question that came up in my mind was, the Answer of the Cities Service Gas Company practically refutes the allegations of the Intervenor, which I consider makes an issue of the whole matter. I reserve the right to do it today, if I do it at all.

Chairman Bond: Have you any testimony to offer?

Mr. McBee: No, sir, we are through. We rest.

INTERVENOR RESTS

Mr. Ralston: Now, may it please the Commission, on the 12th day of August, after serving on the Applicant on the 2nd day of August a notice to allow inspection and make copy or permission to take copy of certain information material to the trial of this case, we filed this Motion in view of the fact that Applicant denied and refused to allow us to make such inspection and in accordance with the laws of Oklahoma covering such matter we filed this Motion for the Commission to order the Applicant to produce certain records set forth in the Motion and in the notice so that we could inspect them and make copies for the purpose of introducing them in evidence when we presented our side of this case. The Motion had also coupled [fol. 592] with it a request when it was filed on August 12th, that it be set for hearing in advance of the trial or the resumption of the trial so we would know what position we were in with respect to whether or not we would obtain such documents and be allowed to make such inspection and copies. We would like to be heard on the motion to inspect.

Chairman Bond: Very well, the Commission will hear you.

Mr. Ralston: In order to inform the Commission as to the exact nature of the matter I want to read the notice which we served upon Mr. Pruet representing the Applicant.

(Mr. Ralston now reads the notice and makes an argument to the Commission.)

Chairman Bond: Before the merits of this motion is argued you desire to argue some other motions?

Mr. Ralston: That's right. We have filed and are now filing with the Secretary—I have given Mr. Pruet a copy of the Demurrer and Mr. White, representing the Conservation Attorney and Mr. McBee the Intervenor. Now, I have also a Motion to Dismiss. I will give Mr. Pruet a copy of that, Mr. McBee and also Mr. White. We have also a Motion that we have filed which we intend to file with the [fols. 593-594] Secretary forthwith,—a Motion for Judgment on the Pleadings and the Evidence,—a copy for Mr. McBee, Mr. Pruet and Mr. White,—that all pertains to the judicial phase of this lawsuit. Now, we have also filed and will file forthwith as to the Legislative phase of the litigation a combined Motion, Demurrer and Motion to Dismiss and Motion upon the pleadings and evidence. I give a copy of that to Mr. Pruet and Mr. McBee and Mr. White and we would like to offer a copy of these in evidence. I understand the practice is that we offer in evidence here the Demurrer, Motion to Dismiss—those four instruments.

Chairman Bond: Let them be marked and received.

Mr. Ralston: Now is it all right Your Honor to proceed now without filing these with the Secretary?

Chairman Bond: Yes, you may proceed.

Mr. Ralston: It will be all right if they are filed later.

Chairman Bond: Very good.

[fols. 595-596] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

(E. Weinberger, Exhibit 62, Official Reporter)

[Title omitted]

DEMURRER—Filed September 9, 1946

Comes now Respondent, Cities Service Gas Comapny, and demurs to the evidence of Applicant, Intervener, and all other parties adverse to the interest of Respondent insofar as same pertains to the judicial question and dispute shown by the pleadings and the evidence, for the reason and upon the ground that such evidence does not prove facts sufficient in law to authorize Commission to grant such party any relief and does not prove facts sufficient in law to constitute a cause of action of any kind or character or grounds for relief in favor of Applicant and/or Intervener and/or any other parties as against Respondent, and for the further reason that Commission has no jurisdiction over Respondent or the subject matter of the action, and for all other legal and constitutional reasons set forth in Respondent's Answer. For misjoinder of legislative and judicial issues and in addition thereto, and regardless of the foregoing reasons, the judicial issues have been eliminated by act of the parties and become moot.

Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent Cities Service Gas Company.

[File endorsement omitted.]

[fol. 597] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

(E. Weinberger, Exhibit 61, Official Reporter)

[Title omitted]

MOTION TO DISMISS—Filed September 9, 1946

Comes now Respondent, Cities Service Gas Company, and moves the Commission to dismiss the application of Peer-

less Oil and Gas Company, Intervener, and all other parties adverse to the interest of Respondent insofar as same pertains to the judicial question and dispute shown by the pleadings and the evidence, and deny such parties any and all relief requested and prayed for for the reason and upon the grounds that such evidence fails to prove in law any cause of action in favor of said parties and against Respondent or affords any ground for affirmative relief of any kind or character in favor of such parties as against Respondent, and for the further reason that Commission has no jurisdiction over Respondent or the subject matter of the action, and for all other legal and constitutional reasons set forth in Respondent's Answer. For misjoinder of legislative and judicial issues and in addition thereto and regardless of the foregoing reasons the judicial issues have been eliminated by act of the parties and become moot.

[fols. 598-599] Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company.

[File endorsement omitted.]

[fol. 600] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

(E. Weinberger, Exhibit 60, Official Reporter)

[Title omitted]

MOTION FOR JUDGMENT UPON THE PLEADINGS AND EVIDENCE—Filed September 9, 1946

Comes now Cities Service Gas Company, Respondent, and moves the Commission for judgment in its favor as against all other parties hereto upon the pleadings and the evidence of Applicant, Intervener and other interested parties adverse to the interest of Respondent, insofar as same pertains to the judicial question and dispute shown by the pleadings and the evidence, and deny such parties any and all relief requested and prayed for for the reason and upon the grounds that such evidence fails to prove in law any cause of action, in favor of said parties and against Respondent or to afford any ground for affirmative relief of

any kind or character in favor of such parties as against Respondent, and for the further reason that Commission has no jurisdiction over Respondent or the subject matter of the action, and for all other legal and constitutional reasons set forth in Respondent's Answer. For misjoinder of legislative and judicial issues, and in addition thereto and regardless of the foregoing reasons, the judicial issues have been eliminated by act of the parties and become moot.

[fols. 601-602] Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company.

[File endorsement omitted.]

[fol. 603] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

(E. Weinberger, Exhibit 59, Official Reporter)

[Title omitted]

DEMURRER, MOTION TO DISMISS, AND MOTION FOR JUDGMENT UPON THE PLEADINGS AND EVIDENCE—Filed September 9, 1946

Comes now Respondent, Cities Service Gas Company, and insofar as the legislative question relating to fixing the price of gas and other terms of purchase for the Guymon-Hugoton Pool is concerned, demurs to all evidence introduced by Applicant, Intervener, and other parties adverse to the interest of Respondent, and moves that the Application of Peerless Oil and Gas Company, Intervener, and all other parties interested adverse to Respondent be dismissed and denied and that Respondent be granted judgment upon the pleadings and the evidence in its favor for the reason and upon the grounds that the Commission has no legal, statutory or constitutional authority to grant the relief prayed for and/or requested, and for all the other legal and constitutional reasons set forth in Respondent's Answer, and for misjoinder of legislative and judicial issues.

Glen W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company.

[fol. 604] Mr. Rolston: Now, I want to take up this Motion,—I will read to the Commission one of these Motions,—this is the Motion to dismiss the Judicial phase. These instruments are all similar, and the reason we proceed in this manner will come out in the remarks which I will make concerning these Motions that have been filed.

Reporter's Note: At this point Counsel read to the Commission Exhibit 61, same being entitled "Motion to Dismiss".

Mr. Rolston (Continuing): The substance is the same in each of these instruments. If the Commission will recall, at the outset of this case we filed two Motions. One Motion was in conjunction with our Answer which we filed, in which we asked the Commission to separate or segregate the issues and grant us separate hearings on the judicial issues presented by the applicant's pleading from the legislative issues which were presented by the same pleading. The other Motion was to advise respondents, in advance of the hearing, what course of procedure would be followed in the hearing of this combined legislative and judicial matter or proceeding. As I recall, no ruling was made on these Motions. I think, with respect to the one to separate the hearings, the Commission said you would take that question up later,—the other one you didn't pass upon, but stated, as I recall, that you were not conducting a law school.

[fol. 605] Chairman Bond: And the Commission so informs you now.

Mr. Rolston: Then you deny my Motion,—is that right?

Chairman Bond: I informed you gentlemen that the Commission is not conducting a law schoo-, that the Commission will reserve its ruling on that motion for the present and will make the ruling at the proper time.

Mr. Rolston: We except to the ruling.

Chairman Bond: Let the record show that defense counsel excepts to the Commission saying it isn't conducting a law school.

Mr. Rolston: No, let the record show that the defendant excepts to the denying of the Motion.

Chairman Bond: The Commission has not denied your Motion. The Commission reserves the ruling on your Motion and will rule on it at the proper time.

Mr. Rolston: Now, if we may,—if we may have permission to do so we want to present to the Commission our position and our reasons——

Chairman Bond: Very well.

Reporter's Note: Oral argument, off the record, was begun and the Motions and Demurrers of the Defendant were argued at length.

[fol. 606] Charles White: We offer exhibit 63, a copy of the order continuing cause, and exhibit 64, Motion to Allow Inspection and Copy or Permission to take Copy, Exhibit 65 Response to Application for Order compelling inspection of records.

Chairman Bond: Received.

Charles White: Exhibit 66 being the Answer of Respondent Cities Service Gas Company to Petition in Intervention.

Chairman Bond: Received.

(Whereupon oral argument was had off the record.)

[fol. 607] Reporter's Note: At this point the oral argument was completed and closed and a five-minute recess was had, after which, the hearing was resumed and the following further proceedings were had:

Chairman Bond: Gentlemen, the Commission held a conference and is of the opinion that since these questions are highly controversial evidently they will be settled by a higher court or courts and the Commission believes the Appellate Court should have all the testimony in the case, therefore the Commission denies both Motions to dismiss, and allows exceptions. The Commission overrules both Demurrers and allows exceptions. The Commission denies both Motions for Judgment on the Pleadings, and allows exceptions.

Mr. Rolston: There is one other Motion, Your Honor.

Chairman Bond: You refer to the Motion on the misjoinder of issues?

Mr. Rolston: No, the one to produce records.

[fol. 608] Chairman Bond: The Commission will recess until ten o'clock in the morning.

[fol. 609] BEFORE THE OKLAHOMA CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Now on this the 10th day of September, 1946, A. D. persuant to adjournment of September 9, 1946, A. D., further hearing of this case C. D. 1054, Peerless Oil and Gas Company, a corporation Applicant vs. Cities Service Gas Company, a corporation, Respondent, was had, all previous appearances being made with the Commissioners of the School Land Department, State of Oklahoma also appearing as Intervenor. The Oklahoma Corporation Commission being in session, the following proceedings were had:

[fol. 610] BEFORE THE OKLAHOMA CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Chairman Bond: Gentlemen, we have before us this morning, Peerless Oil and Gas Company, a Corporation, Applicant vs. Cities Service Gas Company, a Corporation, Respondent. Gentlemen, are you ready to proceed?

Earl Pruet: The Applicant is ready.

Judge Cullison: The Respondent is ready.

Chairman Bond: Alright, go ahead, gentlemen.

[fol. 611] Joe Ralston: May it please the Commission, in order that we know where we are and we understand each other clearly, I understand that your Honors at the close of the day ruled the three pleadings that we had filed as to the Judicial issues, Demurrer, Motion to Dismiss, and Motion for Judgment, was overruled and allowed exceptions. And, as to the combined demurrer, Motion to Dismiss and Motion for Judgment on the Legislative phase that was also overruled and we had pending a motion for Inspection and that was presented to the Commission and you asked us at the close of the day if we had any authorities and we adjourned to prepare authorities as to the materiality and competency and irrelevancy to obtain authorities pertaining to Peerless Oil and Gas.

Chairman Bond: The Commission expressed the opinion that if this was a rate case that you were entitled to what you asked for but if you were not a utility and common carrier, we wanted authorities. Now the Commission believes that Counsel should probably agree on certain situations, and let it go in the record. The question that the Commission has in mind is if you are entitled to values you

are entitled to the cost, and you are entitled to value. A man might pay one dollar per acre for a lease and in a few years that lease might become very valuable. It might be-
[fol. 612] come worth $1000 an acre. The Commission wants an opinion on that as to whether the actual value or market value of the lease.

Joe Ralston: We labored under the opinion that the Federal Power Commission applied that rule. We don't have anything further to present as to our motion, except we want this evidence to rebut the evidence as introduced by the applicant and intervenor. So far in this case, we would like to have the Court rule on that motion and also I am trying to adjudicate our grievance. This is a court of record and we want it clearly shown that we have filed a motion to separate the legislative and judicial phases. As I understand your ruling you took that under advisement.

Chairman Bond: We reserved the right to rule.

Joe Ralston: And the other motion that we filed was on the procedure. I think that the same ruling was made as to that phase, but regardless, we would like to have a ruling on the motion. We have asked from time to time and throughout the trial for a ruling on it and have made objections with respect thereto, but we recognize the right of the Commission to pass a matter of that kind providing they don't pass too many of them. We would like to have a ruling.

[fol. 613] Mr. McBee: I would like to state that the Intervenor would like to have an exception on the Motion of pleading the evidence filed yesterday.

Chairman Bond: Very well, you gentlemen might get together, on value, if you can't we would like to ask you further questions. Why do you want leases and things of that kind and character to show what a man paid for a lease, when the value has probably changed in the last year or two? Why do you want actual value?

Mr. Cullison: I recognize ordinarily that value is the basis but the Federal Power Commission doesn't recognize it and proceeds on original cost in theory—if we had the cost of these properties and could see the values of this properties then we could proceed under the rules of civil procedure. You haven't informed us what rules we are governed by. They made a tender here, we don't know whether it was a lawful tender or an unlawful tender.

Earl Pruet: It was several months that we dickered around on this tender. The cost is changed now.

Mr. Cullison: It is true as you contend—the cost of one month isn't what it might be now.

[fol. 614] Chairman Bond: The one thing that is troubling the Commission is that if in this case and you were constructing a building, it would be easy to produce the cost of construction but on an oil and gas lease you may get it for a song and it may make you a millionaire in a year or two. I thought perhaps you had authorities for the Commission to consider.

Joe Ralston: I think I know what you have in mind. If I recall right, in the beginning, we tried to find out if the applicant was trying to prove market or intrinsic value or comparative value or actual value, or just what they were trying to prove. I don't know where we are yet in this case. I want to rebut any testimony that they have produced, that is the reason that we offered the motion.

Chairman Bond: Suppose the Commission permitted you to obtain possession of the records—you say you want to offer them in rebuttal and could they say in sirrebuttal that the value is increased one hundred foe or one thousand foe.

Joe Ralston: I think that you would be right if we knew what kind of a rate that they were after. We don't know whether this is the judicial phase of the hearing or not. You have let in a lot of other evidence.

[fol. 615] Chairman Bond: Yes, we have Comparative Values.

Joe Ralston: I would like to have Mr. Pruet tell the Commission what he is trying to prove.

Chairman Bond: The Commission will hear Mr. Pruet on the testimony or records on the question and any authorities that you might have.

Earl Pruet: I think that the Commission can consider a large number of things. The Commission can consider whether this constitutes waste. That would take in a large number of items. The Commission could take in consideration the actual value, the market value. I don't think that the Commission should be limited on what they should determine in this case. I think that this is a Conservation case, and the purpose is to fix the price of gas at such a minimum price that it will be inducive to Conservation. It is evident in the record that the present price of gas is conducive to constitute waste. We have presented and proven a num-

ber of different basis for consideration by this Commission in fixing and determining price. If the Commission should permit the introduction of the evidence as to what our lease cost us and to drill and complete, then if the Cities Service is permitted to introduce other matters in this case, then we should be permitted to introduce price as to the lease- [fol. 616] hold, what is before the Commission is the date of the filing of the application.

* * * * * * *

Whereupon oral argument was had off the record.

[fol. 617] Chairman Bond: If the Commission rules against you they must permit you to make the proof you suggest. What do you think about it, Mr. Green. Would you like to make a statement?

Mr. Green: It looks to me that if the Commission is going to take into consideration the value of Peerless leases at the time they purchased them on the basis of the original cost for the purpose of establishing a rate base for which the price of gas in that field might be set, then you of necessity must take into consideration the original cost of all of the leases in that field. If you are going to fix a price on a rate base on average cost, return of so much money on a rate base, you must first adopt a theory,—you can't say the Peerless Oil Company shall have a rate fixed on original cost of the leases and somebody else on reproduction cost. The Federal Power Commission has imposed on them what has been termed "original cost theory." In the Natural Gas Act the Federal Power Commission was specifically authorized to use that theory in fixing *rages*. In the statutes governing this Commission no mention is made of the method to be used. In the case of the City of Tulsa vs. Southwestern Bell, we checked the books of the Southwestern Bell Company for the amount of money they had invested in their plant account. The Commission wrote a rate [fol. 618] order reducing the rates and the Supreme Court sustained the Commission, but we aren't establishing here any formula for fixing a rate base. I don't think the Commission should get off into a rate proceeding. If you do, there is no end to it. If you go into original cost of one lease you should do it on all leases. If you are going to fix it on a rate base proposition then you must determine first how you are going to fix your rate base,—either fix it on

a reproduction cost new theory for the field or fix it on an original cost theory. You can't mix the two. I don't think in this kind of proceeding we should attempt to use a rate base. It is proper, if the Commission wants to know what the Peerless leases cost, if they want isolated spots over the field to see what the reserves are, to use that in fixing the price of gas in the field, they have a right to know that. I don't think that we ought to get off on a rate base theory. If we do, there is no end to it.

Chairman Bond: If we permitted the records to be offered in this case, produced and offered, likewise, reasoning by analogy, wouldn't we have to permit it on every well in the field?

Mr. Green: That's right. I think the first thing you want to determine whether or not, if you are going to at-
[fol. 619] tempt to fix a rate base upon which a rate should be fixed out there in arriving in at an appraisal of original cost new.

Chairman Bond: If we made an exception to the Peerless wells what would the Appellate Court say about receiving proof of that character as to the wells of one company and then not offering it as to all wells in the field?

Mr. Green: I think that is largely within the discretion of the Commission if you want evidence of the original cost in isolated spots over the field or evidence of isolated cases over the field of reserves or value on reproduction cost new value, you get at that, but not for the purpose of fixing a rate base—just to give you an idea about the field. I think you are letting the gate open if you grant it.

Chairman Bond: That's one thing that was troubling the Commission. If we grant it where are we going to stop.

Mr. Green: There is no stopping to it.

Mr. Rolston: In the light of your inquiry of Mr. Green, as we read this application of Peerless in this case, it is trying to do two things,—it is trying to fix a price for the gas that they want the Commission to order us to take and purchase from their well and it is also to fix the price of gas
[fol. 620] in the Hugoton field. Now, those are two separate and distant things. I presume what Mr. Green was remarking and putting into the record was in the legislative phase of the case. In the light of what has been said I don't think he should be *should be* permitted or the State of Oklahoma through the Commissioners of the Land Office to intervene

and intercede in this judicial dispute between Peerless and Respondent.

Mr. Green: Part of my job is to advise the Commission. They asked me for advice, that is what they asked me, and it makes no difference to me whether it's judicial or legislative.

Chairman Bond: Mr. Green didn't have any alternative, when we called on him he had to give one.

Mr. Rolston: All we want is a ruling on the Motion, Your Honor.

Chairman Bond: We'll see if we can't give you one. The Commission denies the application and exceptions allowed.

Mr. Rolston: Now is that the same ruling on the other motions or are you going to rule on them at this time.

Chairman Bond: The only other motion that the Commission has in mind is the pleading that we have a misjoinder of actions, isn't it?

Mr. Rolston: I may be wrong but I *have't* heard the Commission yet rule on our motions that were made at [fol. 621] the inception of this case. I don't want to press the point,—only thing I want the record to show we continually asked you to rule.

Chairman Bond: Tell us what you want the Commission to rule on.

Mr. Rolston: *Alright.* I think I can state it clearly. At the start of this case and as a part of our answer we filed a motion to segregate the legislative part.

Chairman Bond: That is your misjoinder, and the Commission took it under advisement in this case, the Commission reserved the right to rule.

Mr. Rolston: The ruling you made on the misjoinder—on the Demurrer takes care of or rules on the other motions at the start?

Chairman Bond: The Commission understands it has ruled on everything except your plea of misjoinder of causes of action and the Commission reserved the right to rule and the Commission has not fully made up its mind on the misjoinder or causes of action. If you were asked to argue that would you say you followed the procedure or the statute, you regulate it by rules of procedure and practice, unless you adopted rules or regulations of misjoinder. I give you some of the trouble that the Commission is having on that question. We think we have cases where judicial and legislature

questions are mixed in the same cause of action. We don't [fol. 622] know what to do with a motion of misjoinder in a case of that character, we don't know whether the constitutional authorities in giving us legislative, executive and judicial power expected us to exercise those rights jointly,—if we wanted to have any discretion of whether we had to sustain a motion for misjoinder—if you can give us some authorities on the question maybe we can pass on it sooner.

Mr. Rolston: I don't know how to more specifically state what I have in mind than what I have said. The only *think* we would like the record to show, we request a ruling on all motions filed. If they have been overruled then we want exceptions.

Chairman Bond: Didn't we overrule all the motions yesterday? We ruled on your demurrer, we overruled your motion for judgment on pleadings, we overruled your motion to dismiss.

Mr. Rolston: I understood clearly you overruled those we filed yesterday. I don't want to press the matter further.

Chairman Bond: Let the record show that counsel has pressed the Commission to rule on all motions made by the Respondent and continues that they be ruled on and let the record show that the only motion the Commission has in mind is the motion as to misjoinder of causes of action and the Commission has reserved the right to rule, and the [fol. 623] Commission thinks it has the power and authority to rule on a motion of that kind at any time before judgment.

Mr. Rolston: In the light of what you have just said now Your Honor, I don't want to argue at all, but we filed motions yesterday in which pleadings in the judicial part of the case—we filed a demurrer, motion to dismiss and motion for judgment on the pleadings and the evidence. A reading of each of those pleadings will show that we demurred to the evidence that they had introduced so far, we moved that it be dismissed for these reasons, all of which are the same in the three pleadings and in that was a misjoinder of causes of action, the legislative and the judicial and as I understand your ruling, that is overruled and we are allowed exceptions, is that correct.

Chairman Bond: Did you ask in those motions—did they contain a misjoinder? You raised a misjoinder a month or two ago, did you raise it again in those motions?

Mr. Rolston: I certainly did, Your Honor.

Mr. Cullison: A month or two ago was to segregate, the other was on grounds of misjoinder.

Mr. Green: I assume what the Commission meant to say in this record, that you overruled his demurrer to the evidence in the three pleadings but don't understand you had [fol. 624] on the misjoinder; in that part of it you still reserved that part of it.

Mr. Rolston: May we have exceptions to that?

Chairman Bond: You have. Will you get those pleadings Mr. Green and read them to the Commission. Counsel probably didn't read them fully. Maybe we dont understand them. If misjoinder of causes of actions are raised, we didn't.

(Mr. Green now reads the Motion on Misjoinder of Causes of Action.)

Chairman Bond: The Commission is clear now, you did raise the question of Misjoinder.

Mr. Rolston: That is the same in each one of those pleadings.

Chairman Bond: The Commission was under the impression you raised it in the beginning of the case. I *did't* realize it was in this motion. If you are of the opinion that the Commission has embarrassed you some way by making an erroneous ruling of that kind probably we will have to go into conference on it. If not, the Commission would like to say we still reserve the right to rule on the misjoinder because we haven't agreed on it. We think we could delay it at any time up until we want to write an order.

Mr. Rolston: Well, the only thing—as I say, when you interpose a demurrer or a motion to dismiss, which is prac- [fol. 625] tically the same thing,—only recognize there is different procedures for doing it and accomplish the same objective. Take the demurrer, we are objecting and asking that the case be thrown out at this time because of a misjoinder of legislative and judicial issues. Now, if the Commission wants to take that tentatively, that is, you might put it this way, overrule it tentatively or take it under advisement until a later date, that is within the right of the Commission,—all we want is an exception. It is within the power of the Commission.

Chairman Bond: If it doesn't embarrass you in the trial of this case the Commission will still reserve the right to rule

as to the misjoinder of causes of action. If it is going to embarrass you the Commission will go into conference and see what we can do about it.

Mr. Rolston: What do you mean by "embarrassing us", I don't quite understand.

Chairman Bond: If you feel like you can't proceed in this case without a ruling on the question the Commission will try to get together and give you one, but the Commission has discussed that issue carefully and the Commission is of the opinion that they could reserve the right to rule until they went to write an Order. Then if they wanted to they could write an order in the judicial case and let the other [fol. 626] go or write an Order in the other case and let the judicial go.

Mr. Rolston: Let me say this,—there has been evidence introduced here of royalty owners. They have been allowed to stand up and say I want the price of gas increased.

Chairman Bond: That is true.

Mr. Rolston: One woman wanted more money to gad around. We objected and objecting because what they think or what they want has nothing to do how much we should pay Peerless for the gas we take out of their well, in which they have no interest. Our contention that when you misjoined a legislative and a judicial issue you prejudiced our rights and do not grant due process of law which is applicable to procedure as well as substantive law and we ask that you rule.

Chairman Bond: Do you contend that if we do not rule that your rights are going to be prejudiced,—it is the ruling you are entitled to and we have got to rule now or we are subject to reversal by the higher courts. Do your higher courts say you *can't* reserve your rights to rule,—you must rule? Do you really believe if we decide a part of the case, the judicial part, and do not decide the other, that the Supreme Court would reverse us for that reason because we tried them jointly or do you believe if we tried the legisiative part and didn't try the judicial the Supreme Court would [fol. 627] reverse us because we didn't hear the cases together. Do you think a misjoinder permits you to dismiss the case?

Mr. Cullison: I don't think we should pay much attention what we think some other court will do.

Chairman Bond: I want to get your thought on the thing.

Mr. Cullison: What this Commission ought to do, is to abide by, due process. You let in a lot of evidence that no doubt you entertained on the legislative phase of the case.

Chairman Bond: That is true.

Mr. Cullison: Like the plebiscite of the people who flocked in from Guymon and the petition they presented. It wasn't so designated—we don't know. Now the time has come when we have to rebut competent evidence in the case. You haven't discontinued the judicial phase. We thought it was done. Mr. Green here openly so stated and Your Honor rejoined that the opinion of the attorney isn't always the opinion of the Commission. I realize that is true. The judicial phase is still going on. The legislative phase is still going on. Doubtless our procedure would be vastly different if one were eliminated and only one was continued, but specifically, I will say, if only the legislative phase were continued our evidence would be very streamlined, very much so, because we realize the same proces does not apply in a legislative proceeding that applies in judicial [fol. 628] proceedings, where one man is trying to assert and get the money of the other person.

Chairman Bond: What do you think about a proce-ding of this kind. Let me interrupt your Judge. Suppose the Commission would contend that under the law we had a right, where there was a dispute between the parties, to fix price and we say we won't decide the legislative case at this time, we will take that under advisement, decide the judicial part of the case,—what do you think would happen in a case of that kind?

Mr. Cullison: Well, we never have sued this Commission, we don't positively say a mandamus could be brought to compel a decision.

Chairman Bond: I'll tell you what we will do. We'll take a recess of ten minutes and ~~we'll go~~ into conference.

Mr. Pruet: I would like to call your attention to one thing. I still don't see how in the same sentence and the same motion they can contend that there is a misjoinder of *legislatisve* and judicial phases and in the same sentence say that the judicial issues have been eliminated. Here is what they say in their motion.

(Counsel now reads the motion.)

Chairman Bond: If that is true, if they are moot——
Mr. Cullison: You hold it isn't ture, we have to fight it.

[fol. 629] Chairman Bond: You say it is moot but you say we haven't held it is moot.

(At this time a recess for ten minutes is had for a conference.)

[fols. 630-631] (Following a short recess the Commission is again in session and the hearing is resumed.)

OVERRULING OF MOTIONS AND DEMURRERS

Chairman Bond: Gentlemen, the Commission overrules your Motion and allows exceptions.

Mr. Rolston: Then, all Motions and Demurrers are overruled?

Chairman Bond: Your Motions, your Demurrers,—all are overruled, in every respect, and exceptions are allowed.

Mr. Rolston: Now, Your Honor, at this stage of the proceeding, in the light of the ruling, I have another Motion which I want to file.

Mr. Pruet: Before you do that I want to make my record in behalf of Peerless,—that on the Motion for Judgment on the Pleadings, the applicants are entitled to judgment and we ask for judgment in favor of the applicants.

Chairman Bond: The Commission will reserve ruling on your Motion.

Mr. Rolston: Now, may it please the Court, we are trying to represent our client the best we can, and I know Mr. Pruet is——

Chairman Bond: The Commission likes to see a lawyer take advantage of every provision of the law that he can take advantage of in order to protect his client,—you may proceed.

[fol. 632] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

J. L. King, Exhibit 67, Official Reporter

[Title omitted]

MOTION TO SEGREGATE, ETC.—Filed September 10, 1946

Comes now Respondent Cities Service Gas Company and moves the Commission to segregate and separate the evidence, admitted by the Commission over objection of Respondent on behalf of Applicant and all other Interveners, including Commissioners of the Land Office, in support generally of the judicial and legislative issues without limitation, segregation or separation, so that Respondent may be informed as to what evidence admitted by the Commission pertains to the judicial issues as distinguished from the legislative issues, in order that Respondent may intelligently and without prejudice to its rights present its evidence in answer to and in rebuttal of the severable judicial and legislative issues misjoined herein over objection, exception and motion of Respondent in this combined legislative, judicial, and/or quasi-judicial proceeding.

Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys of Record for Respondent, Cities Service Gas Company.

[File endorsement omitted.]

[fol. 633] Mr. Rolston: I haven't filed this Motion yet, with the Secretary. We will offer it as Exhibit 67. I hand each of counsel a copy. Now, I want to read this Motion.

(Reporter's Note: Counsel reads Exhibit 67, aloud. After argument.)

Chairman Bond: The Motion is overruled,—exceptions allowed.

L. M. BATTEN, called as a witness for Respondent, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rolston:

Q. You may state your name.
A. L. M. Batten.
Q. Where do you live, Mr. Batten?
A. Pampa, Texas.
Q. In whose employ are you now?
A. Cities Service Gas Company.
Q. Are you contemplating severing your relations with Cities Service Gas Company in the immediate future?
A. Yes.
Q. You are going with another producer, are you?
A. Yes, sir.
Q. How long have you been,—first, what is your business?
A. I am District Superintendent of pipeline operations and drilling.
[fol. 634] Q. How long have you been connected, directly or indirectly with the oil and gas business?
A. About 28 years.
Q. Have you had any special schooling with reference to oil and gas matters?
A. No special schooling,—just practical experience.
Q. That has been acquired over how long a period?
A. About twenty-eight years.
Q. Will you please relate to the Commission what particular phases of the oil and gas business you have been involved in?
A. Well, I have been connected with the drilling and completion of wells,—that is, gas wells,—the drilling of gas wells, their completion, and the transportation of the gas through pipelines.
Q. Over how long a period?
A. Well, I have been in Texas and Oklahoma about twenty years,—both in Texas and Oklahoma and the Hugoton Field.
Q. Your experience in that line has been over that period, and both in Texas and Oklahoma,—is that correct?
A. Well, for the past four years, in Oklahoma.
Q. How many wells have you drilled in Texas.

A. We have drilled in the neighborhood of eighty wells.

Q. Has the drilling of those wells been under your particular supervision?

A. Yes, sir.

[fol. 635] Mr. Pruett: Did you say "Texas"? Do you mean Texas County?

Mr. Rolston: Yes, Texas.

Mr. Pruet: Your Honor, I don't see what the drilling of wells in Texas would have—I'll withdraw the objection, —go ahead.

Q. How many wells did you particularly supervise the drilling of in the Panhandle of the State of Texas.

A. In the neighborhood of eighty or ninety.

Q. How many did you drill or supervise the drilling of in Texas County, Oklahoma?

A. 123.

Q. Are you familiar with the different types of equipment used in the drilling of gas wells and oil wells?

A. Yes, I'm familiar with most of them.

Q. How many different types of equipment are used now?

A. Well, I don't believe I get you,—"equipment".

Q. I mean rotary, cable, or what.

A. Well, we have the rotary method of drilling, and the cable method.

Q. A different type of equipment is used for each method?

A. Yes, that's correct.

Q. How were those wells in Texas County, Oklahoma, drilled, with respect to the type of tool*d*,—cable or rotary?

[fol. 636] A. We drill our wells with rotary tools to the top of the pay and after we set the producing string, and cement, we standardize and drill the well in with cable tools.

Q. Do you know what practice other producers in the Field follow in Texas County, Oklahoma?

A. Some of the companies are drilling through the pay section with rotary tools,—perforating at the pay section.

Q. Will you relate to the Commission the exact procedure to drill, equip and complete a gas well in the Hugoton Pool, Texas County, Oklahoma?

A. You mean the way we are going it?

Q. The way you are doing it now.

A. Well, our practice is to start a well with rotary tools. After we get completely through the fresh water sand, into what we call the red bed formation, which is below the fresh water sand, we set 10¾ inch casing and use sufficient cement to circulate this casing to the surface. Then our drilling continues with rotary tools until we get to the top of the Crider and we then set a seven-inch casing and use sufficient cement to circulate casing to the surface. Then the rotary tools are moved out and cable tools are moved in. Then drilling through the Crider and Winfield formation, a liner is perforated at the pay sections with blank section at the shale brake. After liner is set, acidizing the well is started.

Q. That is the procedure and method followed by the [fol. 637] Cities Service Gas Company at the present time?

A. Yes, sir.

Q. And you used that system and procedure continuously?

A. Yes.

Q. Do you know what method other producers in the Field follow?

A. Well, south of us, along the Oklahoma-Texas line——

Q. In the Hugoton Field?

A. Yes, in the Hugoton Field.

Q. Do you know whether most of them, most of the other producers are using the method you employ, or the other method?

A. I think most of them are using our method.

Q. Do you know what percentage are using the methods you use?

A. Well, it would be a big percentage, is my belief, judging from watching scout reports and other information——

Q. Well, do you know what the percentage is—what per cent of the wells in the Guymon-Hugoton Field, the wells that are completed in the Guymon-Hugoton Field, are using the method you use?

A. I don't know the exact percentage,—no, sir.

Q. Are there more than two methods of drilling that are recognized and applied in the industry?

A. Not to my knowledge.

Q. And as I understand, one of these is the cable tool method and the other is the rotary tool method?

A. That's right.

[fol. 638] Q. Will you explain how a well is completed by using rotary tools all the way through?

A. Well, I have never done any of that and all the knowledge I have of it is what I have picked up from fellows who have been around those jobs. My understanding is that they drill completely through the pay section, set their producing string, which is converted there into about a five and one-half inch section or casing, cement that, and probably they have to run an electric log to determine the pay section, then they perforate one section or some of them perforate more or all of them, and when that is done they commence acidizing.

Q. Do you know what method Peerless Oil and Gas Company uses in completion of their wells,—drilling and completion?

A. Two of their wells near the Cities Service production, I believe, are using the cable tool method.

Q. That's the same method you employ?

A. Yes.

Q. When you use either the cable tool method of completion,—drilling and completion, or the combined cable and rotary method, is more gas allowed to escape?

A. You mean outside of the drilling in and completion?

Q. Yes.

A. Yes, there is more gas vented.

Q. If I understand you correctly you say there are only two methods employed in drilling wells,—one is the cable [fol. 639] tool and the other the rotary method?

A. That's all I know.

Q. Now, based on your experience, which method is the most efficient?

A. Well, I believe the cable tool method of drilling in is most efficient.

Q. Why?

A. Well, for two reasons. We have less time spent on the well in acidizing, as we acidize all of the pay section and do it at the same time and we don't have a lot of acid backed into an area that is not producing, and I think you would have less expense, less going time on the well.

Q. Just tell, in detail, if you will, the disadvantages, in your opinion, based upon your experience, i..,—what do they call it, "drilling in?" or "drilling through"?

A. The acid is put in with sub-normal pressure in drilling through the pay section and you have mud back in the

porous formation and you have that rotary mud in the producing section, in the mud, in the gas producing area and for that reason it takes additional acid and longer flow time to get your mud out. Some of that shale in that mud is not soluble to acid and you block off gas that may never be recovered. In talking to some of the men who shoot these wells, or perforate them, they tell me when they start shooting holes in the pipe that the mud starts in, indicating that you have had penetration of mud into that formation.

[fol. 640] Q. Do you think of anything else?

A. I think not.

Q. In your opinion, is it necessary, in the efficient drilling and completion of a gas well in the Guymon-Hugoton Pool, under either system, to allow gas to escape into the open air or be released into the open air?

A. Yes, it is necessary for some to escape.

Q. That is, either system or method you use, some gas escapes into the open air? Is that correct?

A. That's right.

Q. Now, do you know of any system or method for drilling and completing a well whereby no gas is allowed to escape into the open air? Do you know of any method now used?

A. No, none that is used now.

Q. You don't know of any method except those two methods of drilling and completion,—is that right?

A. That's right.

Q. And you don't know of any method that could be employed, that is recognized and accepted and that is practical in the industry, to drill a gas well in the Guymon-Hugoton pool or anywhere else without allowing the escape of some gas,—is that right?

A. That's right.

Q. Do I understand you correctly, that by the use of cable tools in drilling through that less gas escapes than by drilling through with rotary tools to complete it?

[fol. 641] A. No, the drilling throughout was including the acidizing.

Q. Yes.

A. There was more time spent in acidizing where they set through and run a tubing and acidizing each section

separately, there was more time spent in acidizing than spent on drilling with cable tools.

Chairman Bond: The Commission will recess until 1:30 p.m.

[fol. 642] Whereupon the Commission was in session after recess.

Whereupon L. M. Batten was recalled to the stand:

Witness examined by Joe Ralston:

Q. You are the same Mr. L. M. Batten that was on the stand at noon?

A. Yes, sir.

Q. At that time I believe I was inquiring as *to* the disadvantages in your opinion of using the rotary drill tools rather than the cable tools, do you know any other disadvantages that you think of?

A. One other, that if you attempted to use cement it blocks—in carrying a thirteen pound slurry of cement the pressure runs 1800 pounds or more at the bottom of the hole where if we were in the producing formation we would expect penetration into that.

Q. You mean by the use of the rotary method that you can get some cement in the producing formation?

A. We have a pressure on the formation—that the formation is at the time we are cementing—and you will have some penetration if made and cemented.

Q. Does that penetrate from the mud and above?

A. Yes.

Q. I asked you, I believe and I don't recall whether you answered or not what percent of the wells, gas wells drilled in the Guymon-Hugoton Field are drilled according to the method that you say you used?

[fol. 643] A. You are speaking—in the field—Texas County, Oklahoma?

Q. Guymon-Hugoton Field in Texas County.

A. 90 or 95% of them completed.

Q. Has the Conservation Officer or deputies or anyone else *make* any complaints to you about the method of utilization by Cities Service Gas Company in the drilling or completion of wells?

A. No, they haven't.

Q. You have in the past, acidized the well immediately in all cases?

A. You mean right after we drilled it in?

Q. That is correct.

A. No, sir, we haven't in the early day put that on our wells. We said that they had a large natural open flow, the wells there cannot have 12 million or more. We do not acidize it for two reasons one is we wanted to determine whether the deliverability of the non-acidizing well as given and the other is that we saved the de-pening of it after an opening—opening the open flow and we found after nine months producing that the deliverability dropped on the well, it was found that it dropped from twenty-five million down to five.

Q. You get more gas by *adidizing*?

A. That is right.

[fol. 644] Q. How much more gas?

A. Well——

Q. How much more deliverability, we'll put it that way.

A. Well, we increased deliverability three times in a number of cases.

Q. By acidizing?

A. By acidizing.

Q. Let me ask you this question. How does the deliverability of our wells in the Guymon-Hugoton pool in Texas County, Oklahoma compage with the deliverability of wells in the same pool that were drilled through with the rotary method, if you know. Do you understand my question?

A. Yes. Our deliverabilities—only company I can think of that is setting through is the Phillips. Deliverability of our wells is considerably more than Phillips' deliverability.

Q. What is the objective of the Cities Service Gas Company in the production, that is what I want to ascertain, do you try to get the most production of the gas that you possibly can?

A. That's right, sir. We try to get out. We think the method of setting on top and drilling in with the cable tools we get a better deliverability of the well and more efficient way of operation.

Q. That's all.

Cross-examination.

By Mr. Pruet:

Q. Only difference between the two methods of drilling is, that they both drill on down to the top of the producing formation with a rotary, the difference is from there on [fol. 645] down, isn't that right?

A. That's right.

Q. In other words, both you and Phillips Petroleum Company drill down to the top of the producing formation with a rotary, then, you, when you get to the top of the producing formation drill the balance of the way through the producing formations with standard tools.

A. That's right.

Q. The rotary tools use mud and force the mud down through the drill stem.

A. Circulate back up.

Q. Circulate back up outside the drill stem.

A. Yes, sir.

Q. And the standard rig just hammers down—just have a bit on the end of the cable and hammer that way, don't use any mud.

A. They have a little mud there for about five or six feet that they make while they are drilling. At the end of the five or six feet maybe a little more. Of course they bail that out.

Q. They don't inject any mud in there.

A. No, sir.

Q. That is mud they create in the natural process with drilling.

A. Yes, sir.

Q. And the absence of the mud in the drilling in is the thing you think makes the Standard the better way of producing through the formations.

A. It would be the mud pressure. The pressure on the formation.

[fol. 646] Q. Mud has a tendency to get in the formation and cement it up.

A. That's right.

Q. I believe you stated more gas escaped in the use of the rotary in drilling in the wells than escaped in the use of the cable tools.

A. Their time in acidizing is more, acidizing a well that is set through.

Q. The longer they keep it up the more gas escapes.

A. That's right.

Q. As a matter of fact, acidizing, that just accelerates the flow, isn't that all that accomplishes?

A. That is true and opens up the pores in the formation.

Q. If everybody in the field drilled and produced their wells without acidizing they might not get the gas as rapidly but they would get the gas that way just the same.

A. Well, my thought on that would be,—tighter that formation is, unless you open up the pores you may have gas trapped there that wouldn't ever be produced.

Q. You only open up a little distance out with the acid.

A. Yes, you open up quite a ways.

Q. How many producing wells does Cities Service Gas Company out in the Guymon-*Hugoton* field in Texas County only, of their own wells, that they are producing and have on connection?

A. We have a hundred and twenty-two I think in Texas County alone.

Q. Do you know when their first well was drilled in out there?

[fol. 647] A. In Texas County?

Q. Yes,—Oklahoma.

A. I don't recall the exact dates.

Q. About, approximately.

A. 1942, I think.

Q. Do you know how many producing wells there was in the field at that time?

A. No, I don't.

Q. Do you know how many producing wells there are in the field at this time?

A. Not exactly, no.

Q. Approximately.

A. Two hundred and forty.

Q. As I understand it, you are their production superintendent in Texas County, panhandle of Texas.

A. Yes.

Q. You are also superintendent in Kansas in the Hugoton.

A. Well, we have one well in Kansas.

Q. What companies—from what companies is the Cities Service Gas Company purchasing natural gas at this time in Texas County, Oklahoma.

A. Republic Natural Gas Company.

Q. How many wells.
A. I don't recall the number of wells.
Q. Well, approximately.
A. Oh, I would say they have eighty wells.
[fol. 648] Q. *Alright*, what other companies?
A. Skelly.
Q. How many wells are they purchasing from Skelly at this time?
A. I think about thirty-five.
Q. What other company are they purchasing from?
A. I believe that's all.
Q. Do you know whether or not they have recently made a contract with Don Harrington for the purchase of his gas?
A. That is my understanding, they have.
Q. They have also made recently, made a contract with Cities Service Oil & Gas Company and Magnolia Petroleum Company in the Hugoton field over in the Kansas side, for the purchase of natural gas from those companies in which they agree to pay six cents a thousand cubic feet.

Mr. Cullison: We object, improper cross examination, getting over in Kansas.
Mr. Pruet: Well, they got into Texas, I thought I had a right to get over on the other side.
Chairman Bond: Objection sustained.

(Mr. Pruet):

Q. The more valuable the gas is the higher price is paid for gas, more efforts made—a greater tendency to conserve it, isn't that correct?
A. No, I wouldn't say that.

Mr. Cullison: We object, improper cross examination.
Chairman Bond: Objection sustained, unless he wants to make him his own witness.

(Mr. Pruet):

[fol. 649] Q. You have testified that there is nothing at this time, or method in use at this time, in use for the purpose of preventing the escape of gas out there.
A. Well, to efficient operation and drilling——
Q. I haven't finished.
A. Excuse me.

Q. Gas worth ten cents or selling at ten cents a thousand cubic feet they probably will find a method or means to prevent gas from escaping.

Mr. Cullison: We object as argumentative.

(Mr. Pruet):

Q. In your opinion as an operator, don't you think that would be done.

Mr. Cullison: I would like to have a ruling.

Commissioner Weems: Recall what the witness testified as to this.

Mr. Pruet: He testified at this time there was no method in use out there that prevented the escape of gas when they were drilling in and acidizing wells. He testified to that in drilling. Now I have said to the witness you have testified at the present time there is no method in use out there in the Guymon-Hugoton field to prevent the escape of gas in the drilling in and acidizing of wells, if gas was worth we'll say ten cents a thousand cubic feet don't you think they would find a way to save that gas, be more cautious to prevent it in escaping.

[fol. 650] Mr. Cullison: I have objected to the one you have asked.

Mr. Pruet: The Commission asked me to recall to the witness what he had testified in direct. I have redrafted my question and am asking him again and putting in the question what the Commissioner suggested I do.

Mr. Cullison: You withdraw the other one.

Mr. Pruet: Yes, I will withdraw it. That isn't the question I asked the witness, now he can answer this one.

Mr. Cullison: We object to that, not cross examination, not bearing on anything brought out in direct. We asked this gentleman nothing about the price. The question isn't to the witness whether it is possible in any manner to prevent that, but it is injecting price,—if the price was so and so, wants him to speculate that such and such would result, might or follow. Not cross examination, doesn't pertain to any of the issues.

Commissioner Weems: Do you have an opinion on that in that regard?

A. No, sir, I *would't havee*. I wouldn't be qualified to say. We are trying to operate and save all the gas we

can. I don't *whether* whether a price increase—I don't [fol. 651] know how it could change it myself.

Commissioner Weems: I think that answer will answer the question.

Mr. Pruet: *Alright.* He said he didn't have an opinion. If he doesn't have any opinion he can't answer the question.

Q. Do you know how many acres of leases, oil and gas leases Cities Service Gas Company owns at this time in Texas County, Oklahoma?

A. I don't know the number of acres, no, sir.

Q. In the drilling in and completing of your wells out there, or the Cities Service Gas Company wells, as I understand it, there are what they call three different sands, is that right, Crider, Harrington and something else.

A. Yes, we are producing the Crider and the Winfield.

Q. You don't produce from the Harrington.

A. No, we found it *was't* productive in that area.

Q. Those two sands are produced through the same hole.

A. That's right.

Q. And the producing sands have become interconnected through drilling so that there are to all intents and purposes one reservoir.

A. That's right.

Q. Do you have any estimate how much natural gas escapes through one of your wells in drilling in and acidizing the well?

A. No, of course that would determine the size of the well.

[fol. 652] Q. Depend on the open flow, of course.

A. That's right.

Q. What is the average open flow of a well out there in the Guymon-Hugoton field.

A. You mean the natural open flow?

Q. Yes.

A. Oh, I imagine in the neighborhood of three to five million.

Q. A day?

A. Yes.

Q. How long under your method of drilling and completing and acidizing a well, how many days would that well be open and flowing?

A. Of course we have larger natural open flow wells than that.

Q. And some smaller, I assume?

A. That's right. You don't have that total volume all the time you are drilling. In other words, you drill your Crider formation, it takes probably a day and a half or so, you will have from six to seven hundred thousand in the Crider; you have some difficulties in drilling your shale break below it, may take a day to drill eight or ten feet there. It varies from one well to another. In the Winfield pay you drill that in about a day, so for the drilling in on a well of eight million probably lose that much gas.

Q. How long does it take you to acidize a well of that kind?

A. Three to four days.

Q. Now, as a matter of fact, the principal thing that acid-
[fol. 653] izing does, it increases the flow, isn't that correct?

A. That's right.

Q. And increases deliverability?

A. That's right.

Q. And gives you a bigger allowable on your well so you can get it out faster, isn't that the main idea?

A. That's right.

Q. There is just so much gas in there.

A. I believe that's right.

Q. And if you get this out faster than the guy drills later he is going to have less to get.

A. That's the purpose of drilling the well, is getting the production.

Mr. Floyd Green:

Q. You stated you had no complaint about the venting of gas by the Conservation Officer in that field, is that right—no conservation officer or deputy had complained to your company about the venting of gas in the Guymon-Hugoton field.

A. In the drilling?

Q. In your method of completion of wells.

A. That's right.

Q. Isn't it a fact you have no rules and regulations in that field relating to the method of completion of the wells.

A. I don't believe——

Q. Does the Commission have any regulations how you must complete your wells?

[fol. 654] A. I don't believe so.

Q. What excuse would you have if the conservation officer had complained about the well if you had no rules on it.

A. I don't know that there would be any.

Mr. Rolston: This testimony is in answer—what we are trying to counteract is the testimony of Mr. Pounds.

Mr. Rolston:

Q. For the purpose of refreshing your recollection, isn't it 123 wells that the company drilled and completed in the Guymon-Hugoton pool rather than 122?

A. I believe the question was Judge, in Texas County Oklahoma. He mentioned Texas County is the reason I excluded our well in Kansas.

Q. 122 in Texas County.

A. I believe that is his question.

Mr. Pruet: That is what I asked him and then he said he had one well in the Hugoton Field in Kansas.

Mr. Rolston: Okeh, that's all.

Witness excused.

Woodrow N. Estel, a witness being called and having been sworn, testified in answer to the interrogatories propounded as follows:

Direct examination.

By Mr. Rolston:

Q. State your name.

A. Woodrow N. Estel.

Q. Where do you reside?

[fol. 655] A. Borger, Texas.

Q. In what business are you engaged?

A. I am working for Dowell Well Incorporated and Oil Well Acidizing Company.

Q. How long have you been engaged in such work?

A. For the last six years.

Q. What does your work consist of?

A. The biggest portion of our work consists in the acidization of oil and gas wells.

Q. Did you ever have any experience in that prior to that six years?

A. I was with one producing company, we had some production in lime country that I worked for.

Q. Have you had any experience in the oil and gas industry other than that—oil and gas business other than that.

A. Worked for one drilling contractor on drilling tools.

Q. Can you explain to the Commission just what is done in the acidizing of a well?

A. You mean the procedure followed?

Q. Yes.

A. Well, there is various types of procedures. The one that Cities Service Company at the present time is using is to use stage treating. The number of stages depends on the condition of the well and the size of the well. If the well is dirty then these small stages, anywhere from one hundred to three hundred gallons are introduced into the well.

[fol. 656] Q. Maybe I didn't explain to you in the question I asked, just exactly—is it more than two methods of drilling and completing a well?

A. Well now, I don't follow you there.

Q. What methods, if you know, are used in the Guymon-Hugoton pool in drilling and completing a gas well, that is, cable and rotary.

A. At the present time they are using one, setting pipe on top, drilling in with cable tools. The other is drilling through and cementing your pipe through all sections.

Q. All right, assuming for the purpose of this question, that you drilled down to the top of the producing horizon with a rotary and then finished it with cable tools, will you explain to the Commission following that procedure how you acidize.

A. You want the procedure we go through?

Q. When it's drilled down to the top with a rotary and completed with cable tools.

A. Well, we start out. It is depending on the condition of the well. If the well is dirty then naturally the first thing to do is to clean the well up, get it in shape to be acidized; to keep it from carrying any materials back in the formation that might give you any plugging action. If the well is clean then the more or less standard procedure, more or less, is to put in a break down stage of around two thousand gallons followed by an equal amount of water and compressed gas. Then, after that has been cleaned up the usual thing

[fol. 657] is to put in a big stage from eight to ten thousand gallons with water and gas. Then if the well cleans up and is in a clean condition we leave the well, if not then a wash of 7½ percent to take out the insolubles used to complete clean the well up.

Q. How long does that generally take to follow that procedure?

A. Average acidizing time will run around three to four days.

Q. Will you explain to the Commission the method employed to acidize a well that is drilled through with the rotary?

A. Well so far there has been two methods,—one is to—where they have all their sections perforated, employ packers and tubing and now there again there is two methods under that. Some will use the packers merely to break each separate formation down and then give one stage over-all perforations. Other operators prefer to take and isolate each section completely and treat it out, and the other way is the use of the bridge plug, go in and perforate one section at a time, acidize that section out, come up and set another bridge plug, perforate and acidize.

Q. How long does the procedure take, to acidize under that method?

A. Oh, the average lapsed time, from the day we start the well until we completely finish it will be around seven to eight days. A lot of it will depend on the size of the well and also what procedure we follow.

Q. Now, is there any advantages or disadvantages over the—with reference to the cable tool method as compared [fol. 658] with the drilling with the rotary.

A. From a standpoint of acidizing I would say, No.

Q. From the standpoint of efficient production.

A. That is outside of our business. I'm not qualified to state.

Q. What is the average time Mr. Estel that it takes to acidize a well of the Cities Service Gas Company out there?

A. From the — we put in our first stage until we finish with the last stage, around three to four days.

Q. What is the time on the other,—average time.

A. Seven to eight days.

Q. What is the purpose of acidizing?

A. To increase your pore size and relieve any restriction that might be in the formation.

Q. Do you know of any other methods used than those you related, in the Guymon-Hugoton pool?

A. No. There is some operators using a water flush behind their acid instead of a gas flush.

Mr. Pruet: You were talking about drilling in

Mr. Rolston: Yes, drilling completion.

Mr. Rolston:

Q. I was asking if there is any other method of acidizing than what you related.

A. No, no other method of acidizing being used.

Q. That's all.

Mr. Pruet:

Q. Acidizing increases the natural flow, doesn't it?

[fol. 659] A. That's right. It also relieves restriction within the formation.

Q. You can get the gas out of there faster.

A. That's right.

Q. Consequently where you have allowables you get a bigger daily allowable on your well.

A. I couldn't answer that. That is a production problem.

Q. Al- right, that's all.

Mr. Floyd Green:

Q. During the period when you — avidizing those wells do the wells remain open, flow wide open?

A. While we are acidizing?

Q. Yes.

A. No, you have to have them closed to acidize them.

Q. You close the wells.

A. Yes, sir.

Q. During what stages of the acidization program do the wells flow gas out of the well head? At any time during that period?

A. None at all during that period. They flow after we have put the acid away to return the fluid.

Q. How do you wash the well out, clean it out, without letting gas ou'

A. The ope r does the washing. We put the acid in and he retu as he sees fit.

Q. Is th wel open during that period of time?

A. Yes, sir, following the—after we introduce the acid and have it all put away then your well is opened to return [fol. 660] your fluid to the surface.

Q. During the three or four day period that you say is the average, what percentage of that time does the well remain open?

A. I couldn't answer that.

Q. Can you approximate it?

A. No sir, because we leave the location when the acid goes in, then they open the flow. We don't stay around there until the well returns the fluid or until the well dries up.

[fol. 661] Q. By either method you don't sit around and await results?

A. No, sir we don't do that.

Q. And you couldn't approximate the time?

A. No sir, the only thing, the only time I could give you is the elapsed time between the first stage and the last stage.

Recross-examination.

By Mr. Pruet:

Q. You say that when you acidize the well, regardless of whether it is drilled by standard or rotary tools, that you don't let any gas escape while you are acidizing it?

A. That's right,—not while the process of acidization is going on.

Q. Regardless of whether it is drilled by standard or rotary tools, while you are acidizing it you don't let any gas escape?

A. That's right.

Q. Then, when does the gas escape, and do you know any reason why it would take more time to get out the liquid when it is drilled in by rotary than if it was drilled in by standard tools?

A. Because you are opening up more sections than you would by cable tool completion?

Examination.

By Mr. McBee:

Q. When you are called on a well, say it is drilled in with the cable tools, what condition is it in as to the flow of gas,—is it closed in when you get there?

A. It is usually closed in.

[fol. 662] Q. Then, how soon after you leave it is it opened up again?

A. It is opened immediately.

Q. Approximately how many wells for Cities Service have you acidized?

A. Our Company has acidized all but one well, I believe, in Texas County.

Q. In your work you have occasion to know something about the volume of gas that is produced in a well, don't you?

A. We go back and get the result,—yes.

Q. Now, can you tell me what the approximate volume of gas is that is produced from the average well when it is finished,—just approximately?

A. Oh, I wouldn't have any idea.

Q. Would you have an opinion what it is in any particular locality if I would name the locality,—say, around Guymon,—about ten miles north of Guymon?

A. No, I couldn't give you an average that would be fair.

Recross-examination.

By Mr. Pruet:

Q. There is one thing you said that I don't understand. You say you would drill through more sections with a rotary than with a standard,—I don't understand what you mean when you say you drill through more sections?

A. I didn't say we drill through more sections,—I said acidize more.

Q. There are just so many sections there, are there not?

[fol. 663] A. I was talking about the wells we have acidized on the Kansas side.

Q. Who is using rotary tools to drill in a gas well?

A. None in Texas County, that I know of.

Q. None that you know of?

A. I have heard that Phillips——

Q. Where are their wells located?

A. In the Southern part of Texas County and in the State of Texas.

Q. Have you acidized those wells?

A. No, we haven't acidized one.

Q. Well, what causes the difference in time in the acidizing of a well drilled in with standard tools and one drilled in with rotary tools?

A. The procedure that you follow.

Q. What is the difference in procedure?

A. In a cable tool well you are acidizing all sections at the same time and in a rotary tool well you are not,—and you will spend just the same amount or about the same amount of time on each section that you would on the complete well which you acidize all at the same time.

Q. Regardless of that your well is shut in all the time you are acidizing it, is it not, anyway?

A. While we are acidizing it, yes.

Q. So there isn't any gas escaping, anyway, in the actual [fol. 664] acid-ing, regardless of the tools used, is there,—no gas escapes during the acidizing, regardless of what tools are used?

A. That's right.

Redirect examination.

By Mr. Rolston:

Q. Mr. Axtell, in line with what *what* Mr. Pruet was inquiring about there are two methods of drilling in wells,—one is by the use of cable tools and the other by the use of rotary tools, is that correct?

A. That's correct.

Q. When you drill through with rotary tools, you say you acidize each producing horizon separately, is that right?

A. That's right, under one procedure.

Q. Which one do you acidize first?

A. That's up to the operator. Some start at the bottom and some at the top, but you take each section separately.

Q. Now, that's the rotary?

A. That's what I'm talking about. But even in the rotary——

Q. You take each section separately?

A. Yes, ut even in the rotary there are two methods you may use,—you may acidize all sections at the same time or you can take them separately.

Q. Well, now, if you use the methods of—you say there are two methods for those drilled in by rotary, one in

which you acidize all of them at the same time and the other in which you acidize each producing horizon separately?

[fol. 665] A. That's right.

Q. Now, when you acidize all of them at the same time when you drill through with the rotary, does it take longer to blow that mud and water and acid out of there than it does when it is drilled through with cable tools?

A. I can't answer that,—I'm not around there when they blow them out.

Q. Now, you say that in the other one they blow them successively, is that right?

A. They treat them and blow them successively,—that's right.

Q. Does more gas escape into the air in the rotary method of drilling through and acidizing than in the cable method of drilling through and acidizing,—or do you know?

A. Well, I don't know.

Examination.

By Mr. McBee:

Q. You said a while ago that when you acidize a well that has been drilled in, it is closed when you get there. You put in your shot, your acid, then you move and it is closed again——

A. No,—they open it immediately after we get through. But we don't stay there until they get all the fluid out and dry the well out.

Redirect examination.

By Mr. Rolston:

Q. When it is drilled through with rotary and you acidize each section separately, after you acidize a section do you blow it?

A. Where they use bridge plugs they blow it at the end of that time.

Witness excused.

[fol. 666] COLIN S. RAE, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rolston:

Q. State your name to the Commission.
A. Colin C. Rae.
Q. Where do you live, Mr. Rae?
A. Tulsa, Oklahoma.
Q. What business are you engaged in?
A. I am Executive Assistant in charge of gas, for Skelly Oil Company.
Q. Are you a graduate engineer?
A. I am, from the College of Mines, University of California. I spent some time in geological work in California, I was well superintendent in Wyoming for three years,—two years District Engineer for the Geological Survey,—eight years with Skelly, as Petroleum Engineer, and then I was made Executive Assistant.
Q. How many years experience would you say you have had in the production field?
A. I have been over thirty years in the oil and gas business.
Q. Then you are thoroughly familiar with the drilling and completion of oil and gas wells?
A. I have worked with both of them and had charge of them.
Q. Has Skelly Oil Company drilled any wells in the Guymon-Hugoton Field?
A. Yes, we have completed about forty wells.
[fol. 667] Q. What method is used and recognized by the industry in the drilling and completion of gas wells in the Guymon-Hugoton pool?
A. There are two methods,—both of them set pipe on top of the gas producing formation,—one drills in with cable tools,—the other drills in with rotary tools.
Q. Do both use acidization?
A. Yes, both of them do.
Q. Have you had experience with both methods?
A. Not in the Guymon-Hugoton Field. We have one other well in the Kansas pool.

Q. That well on the Kansas side of the Hugoton Pool,—is it the same type of producing horizon as in Texas County, Oklahoma?

A. That's right.

Q. Will you relate to the Commission the experience you have had in testing each method?

A. Well, in my opinion the method of drilling in with cable tools is the most efficient method. In the first place, my experience in drilling in and setting pipe with rotary tools is that you have to rely on two or three factors,—the electric log,—the schulumberger,—it is difficult to perforate at the right place and to put the acid in at the right place. With standard tools you know where water is,—with rotary tools it is very difficult to tell where your water is. With cable tools you know the size of your well and you know when you strike the water and you can stop drilling and plug back. And there is another thing,—the [fol. 668] acid treatment, in the standard method, will reach every part of the producing area and for that reason you get the full production of the well. Layers of shale which are not opened up are not producing,—some wells would increase 800 per cent by acidizing, while others would increase not more than two to three hundred per cent. Some wells didn't appear to be producing wells, or commercial wells, but by proper acidization have made fair wells. It has been a great aid to the Hugoton Field, by taking very small, mediocre, wells and making good producing wells of them.

Q. Is there sub-normal pressure out there?

A. Yes,—I might say on that,—that the sub-normal pressure in the Hugoton Field exists all over the Hugoton Field,—not only in Texas County, but it extends into the Panhandle of Texas.

Q. What effect does that have when the well is drilled in with rotary tools?

A. Well, in the degree of penetration of mud which is permeable it depends upon the difference in the pressure between the mud pressure and the formation pressure.

Q. Do you know of any way to drill and efficiently complete a well without allowing some gas to escape into the air?

A. No, I do not. As a matter of fact, that fact was recognized by the State of Oklahoma years ago, when they

allowed its use for drilling and testing the well, and again in 1945 when the law allowed the use of such amount of [fol. 669] gas as is necessary to efficiently drill and complete and operate a well, perce-ving that gas is as necessary to complete a well as the tools and the equipment and the location. It is necessary to properly develop the property. I don't see any other way to do it than to take and use some of the gas in the efficient development of the lease. [fol. 670] Q. Do you have an opinion based upon your experience and your knowledge as a Geologist and Production Engineer which method—that is the cable tool method or rotary method—which method allows the escape of the least gas?

A. There isn't a great deal of difference by perforating several times, you follow the well and take more days to blow it—and aside it will cause the communication of the zones, I would not say on the average that the wells all hav-n't more gas with rotary.

Q. Do you have an opinion which is of the most efficient in the Guymon-Hugoton Field?

A. Far greater ultimate recovery drilling with straight tools is best.

Earl Pruet: Examines the Witness:

Q. Now you said that you was allowed to blow a well by the old statute?

A. That is by the old statute yes.

Q. Isn't this what is says, "* * * the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days."?

A. I think that you will find back in the old rules and regulations that three days was considered considerable time and if you couldn't do it in three days then you did something else and that wasn't efficient.

Q. Doesn't the statute say, doesn't is say as follows that the term waste is used herein as, "The term waste, as used [fol. 671] herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas"?

A. That is right.

Q. I read that law——

A. I would like to read the part of the new law now.

Q. I will give you the law book and let you read the whole thing. You said that you were able to measure the gas better if drilled with straight tools?

A. Yes.

Q. How much are you able to measure?

A. Our wells are pretty small, when they go to the flow depth about three million feet a day.

Q. When you are drilling in a well with rotary tools, the[r] do get gas escaping?

A. No you force it back.

Q. The only time the gas escapes is when you are drilling the well and in acidizing it?

A. That is right.

Q. It is all while you are drilling that this escapes isn't it?

A. That is right.

[fol. 672] Q. Is it possible to connect the gas well to a line before you *adidize* it and after acidizing the well then blow it out separately?

A. No it is difficult to get the gas out of the air and then put it in a pipe line.

Q. How much gas escaping in a day while drilling with standard tools, in your judgment?

A. Probably three and a half million feet.

Q. In twenty-four hours?

A. In thirty-six hours.

Q. Is a day thirty-six hours?

A. You said while drilling in.

Q. Per day?

A. I stated our average was less than three million feet per day, the gas started out at three hundred thousand and it doesn't become three million until thirty-six hours.

Q. How long does it take with standard tools?

A. About a day and a half.

Q. How long did you blow these wells after acidizing?

A. Depending on the size of the well, some will clean out better than others. I will say about 48 hours, will clean most of the wells up.

Q. During that time the gas was flowing?

A. That is right.

[fol. 673] Q. And if you get a million feet will that much escape during that time?

A. Yes that is being used to clean out the acid.

Q. If it is a eight million foot well then that much will flow out?

A. Yes.

Q. How many zones out there in the Guymon Hugoton Field—gas producing zones.

A. Crider and Winfield and then there are zones that have different perm-able strips.

Q. What new zones have you discovered by acidization, what ones?

A. The Crider have zones that pay and Winfield by acid treatment but very me*adcoker*, I have made average wells out of them.

Chairman Bond: The Commission will recess for ten minutes.

[fol. 674] Mr. Pruet:

Q. You heard Mr. Batten testify on the average well out there, that the deliverability was increased three-fold by acidization, do you agree with that?

A. That is an average figure but anybody's wells will vary widely. One may be increased eight hundred percent and one one hundred.

Q. I asked you about the average.

A. Yes.

Q. Now the result of that is, with one well you get the gas, amount of gas, otherwise you have to drill three wells to get it, isn't that right, on the average?

A. You get deliverability that might be equal to three wells but in my opinion you get gas that wouldn't have been recovered without acid treatment.

Q. If you hadn't acidized it, where you have one well, you would get the same amount of three.

A. If you were speaking alone of deliverability, yes.

Q. The result of acidization is, about *one½third* as many people getting royalties out there as there would be if you hadn't acidized, isn't that right?

A. I don't know. That is an economic factor.

Q. You don't know about that—you just don't know about that.

A. Well, for instance——

Q. Well, do you know or don't you.

A. Well, I would say in answer to your question, if Cities Service drilled wells on every section on their forty thou- [fol. 675] sand acre range there wouldn't be any more people getting royalty than now. It depends on how the wells are drilled in the future. If you say 'sections' then it would be three times as many sections that would be producing.

Q. Cities Service has got leases covering a forty thousand acre range, isn't that right?

A. I don't know the exact acreage. It is approximate.

Q. Do you know how much acreage they have in the field?

A. No, I don't accurately.

Q. That's all.

Mr. Rolston:

Q. Mr. Rae, in determining the advantage or disadvantages even as between cable tools and rotary drilling tools, is there any other disadvantage in the use by drilling through with rotary than with the use of cable tools as you have mentioned?

A. Well, I mentioned several. I may have overlooked some, but a very material disadvantage and danger to ultimate recovery in the field out there is the fact that when a rotary drills in that the mud not only goes into the formation, plugs it up and interferes with the later acid treatment but that when the pipe is cemented that the cement has to be put in and circulated to reach the top of the hole or reach the surface casing. That takes such a long period of time that the cement tends to become stiff and builds up big pressures in the bottom of the hole, consequently that cement would work back into the best parts of the pay formation in the various zones out there and in my opinion I doubt [fol. 676] whether shooting and subsequent acid treatment would correct it because we have had several gas wells on which we made squeeze jobs and pumped in cement under pressure that we were never able to get back on production again and in my opinion that formation out there has thin streaks of very permeable pays through which that cement under pressure can travel for considerable distances and it would be very easy for some of the wells out there to plug off entirely certain of those pay zones permanently. For that

reason it would affect the interests and runs on that particular lease and the royalty owners as well.

Q. Do you have an opinion, when a well is being cleaned out after acidizing, as to whether or not that gas escapes with the cleaning out process could be utilized and placed in the pipe lines.

A. I think you would have a problem there in which it could be utilized but it might cost fifty cents or a dollar a thousand to recover that gas. The trouble you are faced with is, if the well had an open flow of 18 million you would have to put in Compressors to pick up the gas at atmospheric pressure and boost it up to four hundred pounds and for a portable compressor plant of that size it would cost a lot of money to install it and move it and in my opinion that the cost of trying to—of course the further damage would be to the compressers from the acid which was still in the gas vapors—and in my opinion attempting to do [fol. 677] that would be far beyond any possible future value of the gas.

Q. What is your opinion then as to whether it would be feasible or not.

A. I don't think it is feasible.

Q. What would be the affect on the pipe line system?

A. Would be the same as on the compressor plants. That acid would dissolve and eat up the lines and cause breaks and holes and losses of gas and it is almost impossible to tell how far through the line, how far that gas would go with the vapors,—it would probably cause damage and corrosion all along the length of the pipe line.

Q. That's all.

Mr. Pruet: That's all.

Witness excused.

JOHN N. HANLEY, a witness being called and having been sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Rolston:

Q. State your name to the Commission.

A. John N. Hanley.

Q. How do you spell that.

A. H-a-n-l-e-y.

Q. Where do you reside, Mr. Hanley?

A. Omaha, Nebraska.

[fol. 678] Q. Are you connected with any gas pipe line company?

A. Yes, sir.

Q. What company?

A. Northern Natural Gas Company.

Q. What official position do you hold with that Company?

A. Superintendent of Production.

Q. How long have you been serving in that capacity?

A. About the last six or seven years.

Q. How many years experience have you had in the gas business?

A. Thirteen years.

Q. Are you a graduate engineer?

A. Yes, sir.

Q. What degrees do you hold in engineering?

A. I hold a Bachelors and Masters Degree.

Q. Are you familiar with the Guymon-Hugoton pool in Texas County, Oklahoma?

A. Generally I am. I am more familiar with the Kansas portion of the Hugoton field than I am the Guymon-Hugoton sector.

Q. Is there any difference, to your knowledge, in the producing horizons in the Guymon-Hugoton pool in Texas County and the Kansas part of the Hugoton field?

A. Very little.

Q. Are you familiar with the methods employed in the industry in drilling and completing gas wells?

A. I am familiar with the method that our company employes in the completion of gas wells because I supervise [fol. 679] that type of work and I have some knowledge of other methods of completion.

Q. You, as part of your education and experience in the gas business, you read periodicals and you talk to other production men and read books, have you?

A. Yes, sir.

Q. Are you generally familiar with the methods employed in drilling and completing gas wells?

A. Yes, sir.

Q. Do you know what methods are employ ' and recognized in the industry?

A. Yes, sir.

Q. Will you tell the commission the methods that you know that are used?

A. In drilling in and completion?

Q. Yes.

A. There are two recognized methods of drilling and completion in the industry. One of which is called "rotary drilling", the other is called 'cable tool drilling', in the Hugoton field. All the wells at the present time are drilled with the rotary down to the top of the pay and from there in the cable tool method of completion, the pipe is set and cemented in the gas producing formations, penetrated by means of the cable tools. In the rotary method of completion drilling proceeds to the depth desired and then electrical surveys are made and the casing run and cemented clear through the gas producing formation after which it is gun perforated.

[fol. 680] Q. Do you have any opinion, based upon your knowledge and experience as to which method is most efficient in the Guymon-Hugoton field?

A. Yes, sir.

Q. Which one?

A. The cable tool method of drilling in and completion.

Q. You mean the drilling through by cable tools.

A. That's right, sir.

Q. What about acidization in the proper completion and efficient completion of the well.

A. Would you elaborate a little bit on that, sir.

Q. In the proper and efficient completion of a well is acidization used?

A. Yes, sir, it is.

Q. Do you know why it is used?

A. To increase the ability of the well to produce gas.

Q. Now, have you drilled any wells, do you know of any wells in the Guymon-Hugoton pool being drilled through with cable tools and not acidized at the time of the finishing and drilling?

A. Do I know of any in the Guymon-Hugoton that have been drilled through with the Rotary?

Q. No, with the cable, without being immediately acidized.

A. Yes, sir.

Q. Do you know whether or not they were lated acidized?

A. I believe most have been acidized to date.

Q. Was the deliverability increased by acidization?

A. Yes, sir.

[fol. 681] Q. Had the deliverability decreased after the well was brought in and prior to acidization?

A. It is my opinion that it had, yes, sir.

Q. To what extent,—could you say?

A. I don't have the figures available to me now, sir, on particular wells.

Q. To a considerable extent, or not?

A. Yes, to a considerable extent.

Q. Do you know whether there is any subnormal pressure or not in the Guymon field?

A. Yes, sir, the pressure is subnormal.

Q. Is that true all over the field?

A. Yes, sir.

Q. In Texas County, Oklahoma.

A. Yes, sir.

Q. What effect does that have on the method of drilling and completing, to your knowledge?

A. That subnormal pressure would more easily permit the entrance of drilling mud and cement in the more permeable zones if the wells were completed by means of rotary tools.

Q. Can you tell this Commission the advantages, if any, in drilling through with the cable tools rather than rotary?

A. Yes, sir.

Q. Okeh, please do that.

A. We believe the cable tool drilling-in method is superior to the rotary drilling through and later gun perforating [fol. 682] method because less fluid is carried in the well by the cable tool method than by the rotary method thereby lessening the opportunity of mud infiltration into the producing formation. We believe the time of acid treating by means of cable tools is shorter. We believe the amount of acid that is used is considerably less in acid treating and cable tool well than a rotary completed well. We believe the possibility of drilling into water bearing formations are less with the cable tool method of completion than they are with the rotary method of completion.

Commissioner Armstrong: Would you recommend to the Commission to establish a rule prohibiting for drilling-in with rotary drills?

A. No, sir, I wouldn't recommend any such rule as that. I am giving you factors that we have weighed in concluding the method we follow in drilling our wells and completing our wells.

Mr. Rolston:

Q. Let me ask you a question there. Is there any more or less gas escaping into the open air through one method than the other?

A. In my opinion there is more gas escapes by means of the rotary method than by the cable tool method.

Q. Do you know of any way or any method, any practical method by which a gas well could be drilled and completed without allowing the escape of some gas?

A. No practical method that I know of.

Q. Would you say that the drilling and completing of a [fol. 683] well in the manner in which you testified to, by drilling through with cable tools is the most efficient?

A. I believe it is, sir.

Cross-examination.

By Mr. Pruet:

Q. While you are drilling through the producing formations with the rotary rig there isn't any gas escaping, is there?

A. No, sir.

Q. While you are drilling through the producing formations with standard tools the gas does escape through that process.

A. Yes, sir.

Q. Then while the well is being acidized there is no gas escapes during that period of time.

A. While the gas is being injected into the formation will the acid——

Q. There isn't any gas escaping then?

A. No, sir.

Q. It is only after the acid has been injected and going—blowing the well, that is when the gas escapes as a result of acidization, is that correct?

A. That's right, to expel the spent acid.

Q. They blow the well out after acidization when they use rotary tools and they blow it out after they use standard tools.

A. Yes, sir.

Q. Only difference, with rotary tools no gas escapes and with standard tools the gas does?

A. Qualitatively yes, quantitatively no,—for I believe you [fol. 684] *you* will find the quantity of acid used on rotary completion is two to three times the amount of acid used in cable tools.

Q. The gas doesn't escape with rotary tools while drilling in.

A. No, sir.

Q. It does with standard.

A. Yes, sir.

Q. Your company is engaged, like the Cities Service, in purchasing and piping natural gas to the consumer and you are interested in getting your gas as low as you can get it.

A. You mean at the lowest possible price?

Q. Yes.

A. I wouldn't say 'yes' to that sir. Our company has never bought any distressed gas.

Q. Your company is opposed to increasing the present price of gas.

A. That is a problem that rests with our management.

Mr. Rolston: Is the purpose of this to discredit the testimony of the witness?

Mr. Pruet: That's what it's for,—shows interest in the lawsuit. He is working for another outfit like Cities Service to keep the price down.

Mr. Rolston: I move to strike out Mr. Pruet's remark.

Mr. Pruet:

Q. You are down here on your company's time?

A. Yes, sir.

Q. Being paid by your company.

A. Yes, sir.

[fol. 685] Q. You aren't being paid any fee by Cities Service other than expenses—are they paying your expenses?

A. I doubt if they do.

Q. You may stand aside.

Mr. Rolston:

Q. That don't keep you from telling the Commission the truth and your opinion as you actually know it, is that right?

A. I didn't hear you.

Q. That is a fact, you come down here to testify, you are telling the truth about the thing.

A. Yes, sir.

Q. As you see it.

A. Yes, sir.

Q. You haven't any interest in this litigation other than you came down here to testify to your knowledge as to the proper way to drill and complete a well and the methods employed, is that correct?

A. That's right.

Mr. Pruet:

Q. While you are on the payroll of the Northern Natural you try to work together with them and you try to get along with them.

A. I try to do what my company wants, sir.

Q. That's all.

Witness excused.

[fol. 686] Floyd Frank, a witness being called and having been sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Rolston:

Q. State your name to the Commission.

A. Floyd Frank.

Q. Where do you live now?

A. Coffeyville, Kansas.

Q. You used to be employed by Cities Service Gas Company.

A. Yes, sir.

Q. You are no longer in their employ.

A. No, sir.

Q. Are you in the gas business now?

A. Yes, sir.

Q. How long have you been engaged in the gas business?

A. About twenty-nine years.

Q. During part of that time were you superintendent of production for Cities Service Gas Company?

A. Yes, sir.

Q. About how many years in all, Mr. Frank, have you had experience in the gas business?

A. About twenty-nine years.

Q. About how many of those years have been spent in the production.

A. Well, production and transportation the entire time—gas measurement.

[fol. 687] Q. I suppose during that time you read books, periodicals, and discussed the production of gas and the methods employed in production with other production men?

A. Yes, sir.

Q. Do you know the methods that are now employed in the Guymon Hugoton pool in Texas County, Oklahoma in the drilling and completion of wells?

A. Yes, sir.

Q. How many methods are there?

A. Two that I know of.

Q. Will you tell the Commission about those *tow* methods?

A. Well, it's the rotary type, is one method, and the cable tools for drilling in is the other method.

Q. You mean for drilling through they use cable tools under one method and they drill through with rotary tools with the other method.

A. That's correct.

Q. Do you know whether or not acidization is recognized as the proper practice and procedure?

A. Yes, sir.

Q. From your experience and your knowledge of the gas industry do you have any opinion as to which method of completion is that most efficient?

A. Yes, I do have.

Q. Which one is?

A. Cable tools.

[fol. 688] Q. Do you have an opinion as to whether or not it is necessary in the Guymon-Hugoton pool in order to promote production to acidize a well?

A. Yes, sir.

Q. Do you know what the advantages over the cable tool method of completion are over the rotary?

A. Yes, sir.

Q. Will you relate to the Commission what those advantages are?

A. I got a pretty fair education here today on it. The advantages of cable tools, in my opinion, would be that you have the formations, producing formations open and free to accept the acid which you inject into the well, whereas in rotary tools, where you drill-in or through, I doubt whether you have that complete information as to the exact location of the producing zones.

Q. Do you know of any method, practical method that can be utilized in drilling and completion of a gas well that doesn't allow the escape of some gas?

A. No, sir, I don't.

Q. Do you know whether there is a subnormal pressure or not in the Guymon-Hugoton pool?

A. Yes, sir.

Mr. Pruet: I object to him leading the witness.

Commissioner Weems: He may answer.

A. Yes, sir.

Mr. Rolston:

Q. Does that have any effect on drilling through with the [fol. 689] rotary?

A. Yes, sir, considerable.

Q. Tell the Commission what effect it has.

A. On account of the heavy mudladen fluid you have in the rotary drilling through the producing formations you would have a considerably higher pressure at the bottom of the hole than you would have otherwise if drilling in with cable tools.

[fol. 690] Q. What is the difference in the volume, the difference in the pressure between the volume of mud laden fluid used in the rotary drilling and the pressure in the producing horizon?

A. Oh, I imagine it would be, in my opinion, around 800 to 1000 pounds.

Q. What effect would that have?

A. That would have the effect of forcing the mud-laden fluid back into the producing horizon, back into the producing formation.

Q. What effect would that have on the amount of gas that would have to be utilized or allowed to escape in blowing that acid out?

A. Well, by rotary drilling there you would lose considerably more gas than you would by the use of cable tools.

Cross-examination.

By Mr. Pruet:

Q. What is your company?

A. Kansas Gas Company——

Q. Do you transport and sell gas?

A. Yes.

Q. Do you buy the gas?

A. No.

Q. Where have you had experience in the production of natural gas?

A. Twenty-five years with Cities Service Gas Company, Bartlesville, Oklahoma.

[fol. 691] Q. During the time you were with Cities Service Company they were not operating in the Hugoton-Guymon Field, were they?

A. Yes.

Q. Have you had experience in that Field?

A. Yes.

Q. During what time?

A. When I left the company in 1942 they had drilled four or five wells in that Field.

Q. Your experience there has been limited to either four or five wells?

A. Yes.

Q. During that time you haven't had any connection with the Field, have you?

A. No,—well, I have been keeping up with it by reading the newspapers.

Q. What newspapers have you read in that regard?

A. The Tulsa World, Panhandle News——

A. The Tulsa World,—a mighty poor medium,—all you know is what you read in the Tulsa World?

A. Oh, no, that's not all.

Examination.

By Mr. Floyd Green:

Q. You testified there is subnormal pressure in that area, —do you know — the cause is?
A. No, I don't know,—I have heard what is the cause.
Q. You don't know the cause?
[fol. 692] A. No, only through hearsay.

The Witness was excused.

Ross M. STUNTZ, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rolston:

Q. State your name.
A. Ross M. Stuntz.
Q. Where do you live, Mr. Stuntz?
A. Oklahoma City.
Q. Who do you work for?
A. Cities Service Gas Company.
Q. What official position do you hold with the Cities Service Gas Company?
A. Superintendent of Production.
Q. Are you a graduate engineer?
A. No, sir.
Q. How many years experience have you had in the oil and gas business?
A. About forty.
Q. Will you relate to the Commission your experience since you first started in the oil and gas business?
A. Between the school years I worked for the Kansas [fol. 693] Natural Gas Company on the test of the first line into Kansas City, in 1905,—then I went back to finish school in Pennsylvania with a B.A. Degree, majoring in science. Then in the Spring of 1906, I came back to the Kansas City area and began work for the Kansas Natural again. That summer I walked pipeline, inspecting and repairing leaks and washouts, from St. Joseph to Weston, Missouri,—that Fall I went to Kansas City and was foreman of the Kansas

City, Ottawa, Lawrence and Topeka pipeline district. In 1907 I moved to Leavenworth and then to western Missouri, and was Superintendent of pipelines and stations, repairing pipelines, testing and inspecting pipelines and was in charge of all sorts of pipeline operation and maintenance in the area comprising the district of Lawrence, Leavenworth, Atchison and St. Joseph. I was there until 1913. During that time I had a lot to do with every phase of the operations of the Kansas Natural Gas Company, including construction and maintenance, between the different towns and cities that it supplied in that area and I worked on all sorts of pipeline construction and maintenance, and during that time I was unfortunate enough to have good luck with one or two bad maintenance jobs and so from 1907 to 1913 I drew most of the major jobs, with a lot of work on compressor stations, testing new lines, right-of-way jobs, assisting litigation, and so on. Early in 1913 I quit the Kansas Natural Gas Company,—they were out of gas so much I thought the gas business was done and I went to Tampico and worked there, mostly in the State of Vera Cruz, for [fol. 694] the Mexican Eagle Oil and Gas Company. My work there was pipeline and compressor station superintendent, I was construction inspector in behalf of the Chief Engineer, on all sorts of construction of pipelines, pump stations, telephone lines and all facilities they had, such as camps, and so on,—speedboats, motor barges, tugboats and such were used and I had supervision of their operations and maintenance. I was paymaster,—handled their right of way contracts and damage claims. After I was in Mexico a few days they had a Revolution and I mixed up in that quite a lot, first on one side and then the other and I had some good experience. In 1914 after the United States went into Vera Cruz I went up town one day, got on a warship, left it at Aransas Pass and never did go back to Old Mexico. In 1914, 1915 and the early part of 1916 I lived on a farm. Period. About the first of February, 1916, I came to Bartlesville, stayed a few days there and went to Kansas to work for what is now the Cities Service Gas Company. In 1916 I had charge of meter operations and maintenance in the area west of Cambridge, Kansas. Then I went back later to Bartlesville and worked on pipeline maintenance. From 1916 to 1917 I was Assistant Superintendent of the combined Pipeline and Production Department, during which time we built an eight-inch line into the Chautauqua Field, in Chau-

tauqua County, Kansas. We built an eight-inch line from Eldorado to — we built the Hominy line and quite a number of oil lines in the State of Kansas. From August 1917 to [fol. 695] March, 1918 I was superintendent of the pipeline department, at Bartlesville, and during that time we reclaimed a lot of lines, and they had another war, if you remember. We completed the sixteen-inch line from Cambridge, Kansas, to Dilworth Field. We built a line from Osage County, Oklahoma into Sourther- Kansas and part of my job was making budgets and estimates for all kinds of construction work. 1918 to 1919 I was Assistant General Superintendent of the Production Division for Kansas and North Central Oklahoma. 1900 to 1921 I was Production Superintendent of Kansas and North Central Oklahoma,—I was assistant to the Production Manager at Bartlesville and did the usual things connected with that job, working out budgets for oil drilling programs, operating reports, and in fact all classes of duties connected with oil field operations and drilling. Later on I had charge of the Geological Department, Land and Lease Department and Scout Department. Part of my working was the clearing of Oil Production work with other departments. I worked with the Legal Department on litigation, hearings, and so on, and when the Manager of Production was out of town I did his work, too. During 1923 I was stationed in Tulsa. I was Special Representative of the Bartlesville Offices, but was located in Tulsa, with charge of all of the Departments of the Company, at Tulsa. From September, 1923 to August, 1925, I represented the Company in the construction of gas lines in various places in Oklahoma and Kansas. From 1925 to 1927 I was in Prince Edward Island, Canada, drilling some [fol. 696] wells and later on was in Nova Scotia doing some leasing, until early in 1927. From March, 1927 to January 1939 I was with Cities Service Company, at Bartlesville, as Superintendent of Gas Production Department and Sales of Drilling and Oil Field Operating Gas, and my work covered all the phases of production work,—scouting for new gas fields, leasing, drilling wells, buying gas, selling gas for drilling and leasing operations, making reports of possible new gas reserves, and the cost of acquiring and connecting them,—assisting with litigation and with valuations and rate hearings, working with legislative committees and State Conservation Commissions. I worked off and on for five years on one rate case. That was in Kansas. During

that time the method now called the Bureau of Mines pressure test on wells was developed and the method of determining pipeline leakage by the drop pressure method was developed, and I worked on those with the Bureau of Mines. 1939 through early 1945 I worked on valuation work, history of gas companies, original cost,—study of gas companies operating and maintenance work, also their gas reserves, future requirements of gas and *hw*ere it would come from. Since the Spring of 1945 I have worked on that same work and since November I have been Superintendent of the Gas Production Division once more.

At this point the Commission adjourned to September 11, 1946, at 10:00 A.M., at which last named hour and date the Commission reconvened and the following further proceedings were had:

[fol. 697] Now on this 11th day of September, 1946, A.D. pursuant to adjournment on September 10th, 1945, A.D., further hearing of this case, C.D. 1054, Peerless Oil and Gas Company, a corporation, Applicant, vs. Cities Service Gas Company, a corporation, Respondent, was had, all previous appearances being made with the Commissioners of the School Land Department, State of Oklahoma, also appearing by their Attorneys as Intervenor, the following proceedings were had:

[fol. 698] Chairman Bond: Gentlemen you may proceed.

Whereupon Mr. Stuntz recalled to the stand:

Witness examined by Joe Ralston:

Q. You are the same Ross Stuntz that was on the stand yesterday?

A. Yes sir.

Q. Now Mr. Stuntz outside of the time you spent in Mexico and Nova Scotia, the work that you have done and the companies you have worked for now comprise the Cities Service Company?

A. Yes that is correct.

Q. When did the companies comprising Cities Service Gas Company start, if they did interstate business?

A. In 1905.

Earl Pruet: We object to that and move that it be stricken because it calls for a conclusion of law, it is for the Commission to say whether or not they were in Interstate *bisomess.*

Q. What was the company now comprising the Cities Service Gas Company doing in 1905?

A. It piped gas from the Gravaham Field near Independence, Kansas to the Joplin area in Missouri.

Q. When did they start doing business across the state line in Oklahoma?

[fol. 699] A. 1908.

Earl Pruet: We object to his stating doing business, that is a conclusion.

Q. Were they engaged in the transportation of gas?

A. Yes.

Q. Just tell the Commission how they did it.

A. They piped gas from the Vanderpool field in Washington County, Oklahoma into Kansas.

Q. What part of 1908 was that?

A. I don't know.

Q. Do you have a judgment?

A. No sir that is one of the things I don't know.

Q. Would you say it was before November 1908?

A. I think it was early in 1908.

Earl Pruet: I want him to qualify that unless he says what now comprises the Cities Service—unless he states what companies that was at the time of the transporting of gas out of the Vanderpool out of Washington County, Oklahoma. I have a right to have that stricken unless he states the names of the counties and companies that he is referring to.

Chairman Bond: The question has been answered without objection, that is a matter of cross-examination.

[fol. 700] Earl Pruet: We move to strike any and all questions and answers, as to the piping out of the Vanderpool in Washington County, Oklahoma in 1908 unless he specifies the company that was piping the gass.

Chairman Bond: You can bring that out on Cross-examination. Overruled.

Earl Pruet: I don't think I can.

Chairman Bond: To the Witness:

Q. Do you know what company that he is talking about?

A. Yes.

Chairman Bond: You can bring that out on cross-examination.

Earl Pruet: Note our exception. That is forcing me to bring out evidence that is inadmissable and I think that he should be allowed to state what companies he speaks of.

Judge Cullison: The question has been asked and answered.

Earl Pruet: Note our exception.

Chairman Bond. Exceptions allowed.

Joe Ralston continues with the witness:

Q. From your testimony so far Mr. Stunts you have apparently worked in every department practically in the phase of the Gas Business from the production, transportation and distribution part, is that correct?

[fol. 701] A. I do not have anything to do with the distribution of gas.

Q. What would you say was the largest part of your experience, the production or the transportation or just what part?

A. I have been engaged in production longer than anything else, than any other part.

Q. What would be second?

A. Pipe line and compressor station work.

Q. That is transportation?

A. Yes sir.

Q. Are you thoroughly familiar with the system of Cities Service Gas Company for production and transportation of Natural Gas?

A. Yes sir.

Q. Have you had prepared under your supervision a map showing the entire system of Cities Service Gas Company?

A. I have.

Q. From production and transportation to the place of marketing?

A. I have.

Q. Do you have this map with you?

A. Yes sir.

Q. Will you please produce it?

A. Yes sir.

Q. Do you have any extra copies of this map?

[fol. 702] A. Yes I do, I have three colored and two not colored.

Q. I hand you what the reporter has marked as Exhibit 68, please tell the Commission what that is?

A. That is a map of the present system of Cities Service Gas Company?

Q. And what does it cover?

A. Fields from which the gas comes, pipe lines and compressor stations.

Q. Do you know whether that is a true and correct map of the entire system of the Cities Service Gas Company showing the production, gathering and transportation lines as of today?

A. It was as at the end of 1945, there may be some small lines that have been taken up or laid since that time.

Q. Is that as of the time this lawsuit started in October 1945?

A. Yes sir.

Joe Ralston: We offer in evidence Exhibit 68, the map of the Cities Service Gas Company System.

Chairman Bond: Received.

Joe Ralston Continues with the Witness:

Q. Will you tell the Commission, Mr. Stuntz, and point out on the map the various sources of supply of the Cities Service Gas Company?

A. The fields in yellow are the ones in which the Cities Service Gas Company produces gas, the ones in orange are the fields in which it produces gas and only produces gas; [fol. 703] and the field- in Green are the fields where the company produces and purchases; and the fields in blue are storage fields.

Q. Now Cities Service Gas Company purchased gas in Texas County, Oklahoma?

A. Yes sir.

Q. And what pool is that in?

A. Guymon-Hugoton pool.

Q. What color on the map is that?

A. Green.

Q. What does that mean?

A. The field- that is colored green are the ones — which the Cities Service both purchases and produces gas.

Q. Can you name the fields in Oklahoma or pools from which Cities Service Gas Company takes gas in Oklahoma?

A. Yes sir.

Q. Will you do so please?

A. Beginning at the South side of the map—in the eastern part of the Fitts pool in Ponotoc and Coal County, the next one is a large orange place, the Seminole area and then the Buck field, the whole area is the Bethel area on north to the main line is the Arlington Field, Paden north of that—west Arnold field, north Paden Field, Vander-le, Depew Field, South East Depew Field, Coyle and east Sporn Field, the Osage Field and Hogshooter Field and South Oglesby Field. The Cities Service Gas Company purchases some gas in the north part of Osage County called [fol. 704] the Barroum Field, then the next line west begins at the south end, the Cement Field, the Oklahoma City Field, Edmond Field, Marshall Field, Lovell Field, Lucien Field, Perry Field, Wolf Field and the other one is the Guymon-Hugoton Field.

Q. The Cities Service Gas Company transports gas and produces in *in* Texas County, Oklahoma, and in Texas too?

A. Yes.

Q. Where does the Texas gas go and where is it acquired?

A. In Carson and Gray Counties, Texas.

Q. Where is it transported to?

A. Into the general system at Wichita, Kansas.

Q. The gas produced in the Guymon-Hugoton, where does it go to?

A. Blackwell station at Blackwell, Oklahoma.

Q. Is there any way to tell or do you know what part of the gas taken from the Guymon-Hugoton Field is sold in Oklahoma and that part which is taken out?

A. Its a very small part sold in Oklahoma.

Q. Is it mixed with any other gas?

A. Yes sir, at Blackwell its mixed with all the gas that comes from the field south of Blackwell.

Q. Do you know what part, exactly what portion of the Hug-ton gas and the gas that you say is produced in that pool south?

A. South of Blackwell.

Q. What happens at Blackwell?

[fol. 705] A. Well part of the gas goes east from Blackwell and part north to Bilworth and at that point some goes northeast in Cowley County in Kansas and the other part goes north to Wichita.

Q. What percent of it goes*t*—if you know, is disposed of in Oklahoma?

A. I don't know of those figures, I don't have those figures with me, its a very small amount.

Q. Can you tell the exact amount?

A. I can't tell the exact amount, at anyone place that is disposed of in Oklahoma, I could tell the total amount sold in Oklahoma if I had the figures.

Q. What I would like to know, can you tell what the exact portion of the Guymon-Hugoton Gas is disposed of in Oklahoma?

A. No sir.

Q. Why is the reason that you can't?

A. Its comingled with other gas at Blackwell and goes in distribution and at Caney station and other stations and its comingled with other fields and I don't know.

Q. Does the direction volume and rate of flow of gas vary from day to day in the system?

A. Yes sir.

Q. Awhile ago you said that the gas produced in the Texas Panhandle was transported to Wichita?

A. Some of it is.

Q. Then what happens?

[fol. 706] A. That's divided into various lines again.

Q. Does any of this gas in Texas and Oklahoma ever get together?

A. I don't understand.

Q. At any place in our system, does this gas from Oklahoma and Texas get together?

A. Yes sir.

Q. Where about?

A. Wichita in the first place.

Q. Where does it go from Wichita?

A. Some north to the area of Newton, Kansas, some northwest to Hutchinson or Superior, Nebraska. Some northeast—north east toward Ottawa and Kansas City, and some southeast toward Cambridge and Caney station.

Q. Does any of it come back to Oklahoma?

A. Often.

Q. Where about?

A. From the Caney station southeast toward Vinita.

Q. Is that Texas or Oklahoma or Texas and Oklahoma gas?

A. Any combination.

Q. Are you familiar with the Guymon-Hugoton Pool in Texas County, Oklahoma?

A. Yes sir.

Q. Do you know what companies are transporting gas out of that pool besides the Cities Service?

[fol. 707] Vice Chairman Weems: You mean in Oklahoma?

Joe Ralston: Outside the pool.

A. Yes.

Q. Name them.

A. Southwest Public Service Company, Phillips Petroleum Company.

Q. Anyone else?

A. Panhandle Eastern, Phillips supply Panhandle Eastern.

Q. And our own company, Cities Service Gas Company?

A. That is right.

Q. Do you know based upon your knowledge and experience, do you know what percent of the gas produced sold and transported out of the Guymon-Hugoton Pool in Texas County, Oklahoma goes outside the state and what percent goes inside the State?

A. You mean eventually?

Q. Yes.

A. No.

Q. Well, do you know what percent of it goes into the stream of Interstate Commerce and what percent goes into the stream of intrastate commerce?

A. Yes, approximately.

[fol. 708] Q. Can you tell what percentage is transported and sold in interstate commerce from the pool, in Texas County, Oklahoma?

A. Approximately one billion feet a month is used in Oklahoma.

Mr. Pruet: We object to that as not responsive and move it be stricken?

Mr. Rolston: I agree with you.

Mr. Rolston:

Q. I want to know the percentage, if you know, of all the gas produced and transported out of the Guymon-Hugoton

pool, what percentage of that goes into interstate commerce.

A. About ninety percent.

Q. Now, that isn't limited to the gas we produce, that is all the gas in teh pool, is that correct?

A. That is approximately right.

Q. What is the percentage of our gas that we produce and purchase out there goes into interstate commerce?

A. I believe it all does.

Q. Is the Cities Service Gas Company regulated in its business by any agency?

Mr. Pruet: We object to that, for the reason that it calls for a conclusion of law.

Mr. Rolston: Well, whether or not they are regulated is a fact.

Mr. Pruet: The regulation would be the best evidence and not what this man says.

Mr. Cullison: Is there an issue on the regulations? There isn't any dispute about that?

[fol. 709] Mr. Rolston: You are making an objection?

Mr. Pruet: If you don't know what I said, if you don't know whether it's an objection or not, maybe we should conduct a law school. I objected to your question for the reason it called for a conclusion of law and that the Regulation or an Order, whatever you are after, would be the best evidence, if there is such.

Commissioner Weems: Mr. Witness, do you know?

A. Yes, sir.

Commissioner Weems: You may answer.

A. It is regulated by several agencies.

Mr. Pruet: We object to the question and answer and move to strike the answer for the reasons heretofore given.

Commissioner Weems: Overruled and exception allowed.

Mr. Rolston:

Q. Tell the Commission what agencies.

A. Federal Power Commission, this Commission, the State Corporation Commission of Kansas and the Texas Railroad Commission to a certain extent.

Q. Any other Federal Commission?

A. Securities & Exchange Commission.

Q. What part of our business is regulated by the Federal Power Commission.

A. The sales of gas for resale,

Q. Do we have any part of our business that is't regu- [fol. 710] lated by the Federal Power Commission?

Mr. Pruet: We want to object *ot* his statement there that their sales for resale are regulated by the Federal Power Commission because that is a matter of law and a matter of regulation or Order of the Commission itself, and if they want to prove the Order of the Commission and what is regulated and the effect of it the proper way to prove that is to introduce the Order of the Federal Power Commission. This business of letting a witness testify what the law is and what the regulations are is wholly incompetent, irrelevant and immaterial and we now move to strike all of it.

Mr. Rolston: If you want to be technical,—this Commission takes judicial notice of the laws of *this* United States.

Mr. Pruet: If they do why don't you assume that the Commission will perform its duties and not try to prove it by a lay witness.

Mr. Cullison: It wasn't what their power or right was, but what they are doing, we want to show how our direct industrial sales are regulated.

Mr. Pruet: If you want to prove what the Federal Power Commission or any other agency has done and the kind of Order it has made, the way to prove that is by the Order itself.

[fol. 711] Mr. Cullison: You would have to bring all the Orders in existence.

Mr. Pruet: That's what we want you to bring.

Mr. Cullison: You can prove a negative by saying 'no' and let the other person on cross examination bring out all Orders.

Mr. Pruet: I never proved negative in my life.

Commissioner Weems: Mr. Witness, do you know? Can you respond to that question?

A. Yes, sir.

Commissioner Weems: The Commission would like to hear. Overruled and Exception allowed.

Mr. Pruet: Will the Commission let me introduce what Orders have been made?

Commissioner Weems: Yes, sir.

Mr. Pruet: Do you let him go here, a layman that don't know any law, testify what the law is and what the Federal Power Commission is doing?

Mr. Cullison: If it be limited to the things we are inquiring about, that's all right,—if something else we claim there is no Order on this, now to introduce some other order on something else, we will object to that.

Q. (Mr. Rolston): Can you answer the question, Mr. Stuntz?

A. Yes.

Q. What part is it?

[fol. 712] A. Small amount of intrastate business and all main line direct sales.

Q. What do you mean by 'direct sales'?

Mr. Pruet: We object to the question and answer and move to strike it because it appears on the face from the answer of the witness that it is purely a matter of the laws of Congress.

Q. (Mr. Rolston): What do you mean by 'direct sales'?

A. Sales of gas direct from Cities Service Gas Company, from its own lines.

Q. Direct to the consumer?

A. Yes, sir.

Q. Now, is the system and business of the company integrated or not?

A. Yes, it is.

Q. Will you explain what 'integrated' means?

Mr. Pruet: That is a matter or law.

Commissioner Weems: I think the Commission understand what the meaning of the word is, *unlesss* you have some specific reason for wanting it in the record I don't think it is necessary at all.

Q. (Mr. Rolston): Is it all integrated or not?

A. There are small parts of it that aren't.

Q. What part?

A. Oh, there is the company Buck well in Hughes County and a small amount of production in Osage County, a small [fol. 713] amount of production in Edwards County, Kansas and in Marion County, Kansas.

Q. Do you know of your own knowledge whether all the gas produced in the Guymon-Hugoton pool goes in the integrated part of the system?

A. It does, except station fuel.

Q. Can you tell the Commission just what the Cities Service Gas Company business is?

A. The acquiring of gas reserves, the development of them, the acquiring of other reserves by means of gas purchase contracts, the production and purchase of gas, the transportation of it to markets.

Q. And where are these markets?

A. Mostly in Kansas and Missouri, some in Nebraska and some in Oklahoma.

Q. How many states does Cities Service Gas Company operate in?

A. Texas, Oklahoma, Kansas, Nebraska, Missouri.

Q. Now, in answer to a question awhile ago, you stated, as I understood it, that Cities Service Gas Company purchased gas in the Guymon-Hugoton pool, is that correct?

A. It is.

Q. Will you explain how we do that?

A. The company's purchases in the Guymon-Hugoton pool are by means of pipe line deliveries. The producers own their own leases, wells, gathering lines and the main line or main lines that bring it to the points of delivery [fol. 714] on the Cities Service Gas Company gathering system in Texas County, Oklahoma.

Q. How is that transaction for purchases consummated?

A. By means of contracts.

Q. Is that a written contract or oral contract?

A. Its a written contract.

Q. Do you have any oral contracts?

A. No, sir.

Q. They are all written.

A. Yes, sir.

Q. Why does the Cities Service Gas Company purchase gas, for what purpose?

A. To acquire additional reserves of gas to be taken when needed.

Q. What do they do with it?

A. Put it into their main system and transport it to the places of market and sell it.

Q. Do I understand you correctly, they purchase it for the purpose of supplying their market, is that right?

A. Yes, sir.

Q. I don't know whether I asked you this or not, I believe I did, I want to be sure—what part of our business,

percentage, is intrastate and what is the percentage interstate?

A. Oh, perhaps one or two percent intrastate.

Q. Now, when Cities Service Gas Company purchases this gas you say that is done under written contract.

A. Yes, sir.

Q. Now, does Cities Service purchase from everybody [fol. 715] that wants to sell it to them?

A. No, sir.

Q. Does Cities Service Gas Company hold themselves out as a common purchase, willing to purchase from any and all sellers?

Mr. Pruet: We object to whether or not they are common purchasers, that is a matter or law to be determined by this Commission.

Commissioner Weems: Objection sustained.

Mr. Rolston: We offer to shown by the witness on the stand that if he was allowed to testify he would say that Cities Service Gas Company has never held itself out as being ready, able and willing to buy gas from any and all persons who has it to sell and never at any time has Cities Service Gas Company been a common purchaser of gas in fact.

Mr. Pruet: Part of the offer would be proper and part of it certainly isn't. That last sentence where he says 'they never have held themselves out, never been common purchasers'.

Mr. Rolston: We withdraw the last part of the question. Can you answer the first part of the question?

A. Yes.

Mr. Pruet: Why don't you reverse it in proper form and I won't object.

[fol. 716] Mr. Rolston: What is proper or improper we might not agree on.

Mr. Pruet: He doesn't know what you mean by saying 'last part'.

Q. (Mr. Rolston): Do you know of your own knowledge whether Cities Service Gas Company has even held itself out or does now hold itself out as willing, ready willing and able to purchase gas from any person or seller who has gas to offer for sale.

A. No, it don't.

Q. You say that these sales are made under contract in writing, is that correct?

A. That's right.

Q. Are they ever made before the contract signed by both parties, executed by both parties?

A. You mean deliveries made before that?

Q. Yes.

A. Very seldom.

Q. Where are they last signed, the contract?

A. In Oklahoma City.

Q. By who?

A. Cities Service Gas Company.

Q. Now, you said in most instances there is no delivery until after the contract is signed, in what instances that you know of, if you do know, where deliveries are made pursuant to the sale before the execution of the contract?

A. Well, they are very rare, but I know of an instance [fol. 717] where we had a temporary contract and deliveries were made under that for a time and then the permanent contract wasn't signed for a while, but deliveries continued.

Q. I mean where there wasn't any contract.

A. Well, there may have been cases.

Q. Well, in order to get to the point, — was only in cases of emergency.

A. That's right.

Q. Is the gas taker uniformly to perform those contracts, is that right?

A. I don't know what you mean.

Q. Well, the gas is taken in a purchase to uniformly carry out the terms and conditions of the contract.

A. Yes.

Q. Is it ever taken otherwise except for fuel?

A. I don't remember any instance.

Q. Now, Mr. Stintz, how long have you had knowledge of and been connected with the Guymon-Hugoton pool?

A. Since 1928.

Q. And I suppose you — been out there numerous times.

A. Yes, sir.

Q. You have enumerated the people that produced and take gas out of there.

A. Yes.

Q. Do you know whether there is a market price for gas

delivered and sold to pipe lines in the field, in Texas County, Oklahoma?

[fol. 718] A. I do.

Q. Do you know whether there is a going price in the field?

A. I think that is the same thing.

Q. What is the market price for pipe line deliveries in the field in Texas County, Oklahoma?

A. We pay four and a half cents.

Q. I didn't ask you that. I said, what was the market price, if you know.

A. Four and one-eight-, approximately.

Q. Do you know what price Cities Service Gas Company pays for pipe line delivery of gas in the Guymon-Hugoton pool?

A. Yes.

Q. How much?

A. Four and a half.

Q. How much gas volume?

A. Between eighty and ninety million a day.

Q. Do you know of other sales of gas by other companies in the Guymon-Hugoton pool for pipe line delivery of gas?

A. Yes.

Q. What are those companies?

A. Southwestern Public Service Company delivers gas to Panhandle Eastern Pipe Line Company and Phillips Petroleun. Company delivers gas to Panhandle Eastern Pipe line.

Q. Do you know whether Cities Service Gas Company is *any* anyway associated with any of these companies you mentioned?

A. No.

[fol. 719] Q. Do they have any interest in them?

A. No, sir.

Q. Do we have any interest in the contracts that they have made?

A. No, sir.

Q. Do we have any control over them directly or indirectly?

A. No.

Q. Now, can you list the prices that the gas is sold for, pipe line delivery, in the Guymon-Hugoton pool?

A. Yes, sir.

Mr. Pruet: Let me ask a qualifying question.

Q. (Mr. Pruet): Are those sales all made under contracts?
A. Yes.

Mr. Pruet: We object to any testimony for the reason that the contracts themselves is the best evidence. We would like to have them in this record.

Mr. Cullison: This is an expert; this is part of his knowledge that makes him an expert—doesn't matter how the expert acquires the knowledge, when he has it that is a part of his being an expert.

Commissioner Weems: Mr. Pruet, your objection seems to be well taken, but this man—have you made a study of these various contracts?

A. Yes, sir.

Commissioner Weems: You are well informed as to their contents and can figure what the question embraces?

A. Yes, sir.

[fol. 720] Commissioner Weems: You may do so.

Mr. Rolston: Let me ask a preliminary question.

Q. (Mr. Rolston): You also made a study of the Guymon-Hugoton pool, price of gas and the sales of it, is that right?
A. Yes.
Q. And this knowledge you acquired is not alone what is in the contract.
A. It is from talking to people.
Q. Okeh, will you list those prices?
A. The price for gas delivered by Southwestern Public Company to Panhandle Eastern is four cents, and the same price holds for the gas delivered by Phillips to Panhandle Eastern.
Q. Now, is there any other sales?
A. Mr. J. M. McCormick is making a pipeline delivery of gas to the Cabot Carbon Company.
Q. Is that a sale of gas, that is gathered and delivered to the pipeline company in the field?
A. It is gathered and delivered to the Cabot Carbon Company's channel process plant, yes, sir.
Q. Do you know what the price is on that?
A. Yes, sir.
Q. What is it?

A. Five cents.

Q. Do you know how they get that five cents?

A. Yes, sir.

Q. Tell the Commission.

[fol. 721] A. It is on an Order of this Commission or a condition of the permit to use gas in Texas County, Oklahoma, for the manufacture of channel process carbon black.

Q. Is that a price that was arrived at between the parties by negotiation between themselves?

A. No, I think not.

Q. Or was it fixed by some agency?

A. My understanding is, it was the minimum price fixed by this Commission.

Q. And on what—how long did it run, do you know? The Order?

A. For the duration of the war and sometime after that.

Q. Would you say it was an emergency order?

A. Very much so.

Commissioner Armstrong: Do you know whether the war is over or not?

A. I haven't seen any announcement by the President that it is.

[fol. 722] Q. Do you know about the sales in the Guymon-Hugoton Field for emergency purposes?

A. Yes, sir.

Q. What was the price paid?

A. Four cents.

Q. Do you know whether or not the Peerless Oil and Gas Company sells any gas in the Guymon-Hugoton Field?

A. Yes, they do.

Q. What price do they sell it for?

A. Four and a half cents.

Q. Now, Mr. Stuntz, is all the gas that is sold in the Guymon-Hugoton Field sold at the prices you mention? Are there any other sales that you haven't mentioned?

A. There are some sales by the Southwest Public Service Company to local customers, cities,—sales by the Republic Natural Gas Company to the City of Guymon and this Southwest Public Service Company supplies the towns of Beaver, Forgan, and several other towns in Texas and Oklahoma.

Q. Are these sales to pipelines?

A. No, they are sales to distribution plants.

Q. Do you know what the weighted average price is for gas sold in the Guymon-Hugoton Field?

A. Yes.

Q. How much is it?

A. For the first seven months of 1946 it is approximately [fol. 723] four and one-eight- cents.

By Commissioner Armstrong:-

Q. What do you mean by "weighted average"?

A. All the gas and all the money, averaged.

By Mr. Pruet:

Q. Taking into consideration the amount of gas sold at one price and the amount of gas sold at another price and averaging the whole thing up on the basis of the amount of gas sold at each price,—is that it?

A. Yes, sir.

Mr. Rolston resumes:

Q. Have you testified as to all the sales of gas in the Guymon-Hugoton Pool that you know of or that you now recall?

A. Well, I didn't say anything about the sale of gas by Republic Natural Gas Company to the City of Guymon, only just recently.

Q. Well, have you told all of the sales of pipelines companies in the Field?

A. I don't believe I did say specifically, that we buy from Skelly Oil Company and Republic Natural Gas Company.

Q. Are those pipeline deliveries in the Field?

A. Yes, sir.

Q. At what price?

A. Four and a half cents.

Q. What price at the wellhead?

A. Four cents.

[fol. 724] Q. What is the half cent for?

A. Gathering, transportation and delivery.

Q. Is that the same price that we pay everybody from whom we purchase gas in the Guymon-Hugoton Pool?

A. Those two are the only ones in the area that we are getting any deliveries from at the moment.

Q. You don't have delivery unless you have a contract?
A. That's right. We have another contract.
Q. But there are no deliveries being made?
A. If there are it's in the last day or so.
Q. What is the price in that contract?
A. Four and a half cents, delivered.
Q. The same as the other?
A. Yes.
Q. Is all the other gas purchased by pipeline companies?
A. No, the Peerless Oil and Gas Company has four wells from which it sells gas to the Cabot Carbon Company, and there are three other wells——
Q. Of the gas wells you have testified about,—all their gas is purchased in the Field,—is that right?
A. That's rright.
Q. How many wells has Cities Service Gas Company drilled and completed in the Guymon-Hugoton Field?.
A. 123.
Q. To your knowledge have there been any dry holes [fol. 725] drilled in Texas County, Oklahoma?
A. Not right in the producing area, that I know of,—there may have been some outside of that area.
Q. Was that recently or a long time ago?
A. A long time ago.
Q. If at all?
A. If at all.
Q. Now, as I understand, you are Superintendent of Production at the present time, for Cities Service Gas Company?
A. That's right.
Q. You have charge of all the production for the Company?
A. Yes, sir.
Q. Are you familiar with the rules and regulations of this Commission governing the production of natural gas?
A. I think so.
Q. Is there more than one regulation?
A. Well there are statewide rules and rules for the Guymon-Hugoton pool.
Q. Do you know whether there are any reports required by those rules, by the Conservation Officer?
A. Yes, there are.

Q. Do you know whether or not the Conservation Officer has forms for that report?

A. Some of them, yes.

Q. I hand you here a paper marked Exhibit 69,—I will [fol. 726] ask you to tell the Commission what the pape- marked Exhibit 69 is?

A. That's a well record.

Q. Do you know,—state who prepared that form, if you know.

A. The Corporation Commission.

Q. That is furnished the producers to make their reports, is it not?

A. Yes, sir.

Q. Is ther- any provision on that exhibit for reporting on acidization?

A. On the report form under the heading, "Cementing and Mudding" is a sub-head of "Chemical" and that is subdivided into "Gallons" and "Make",—what does that pertain to?

A. Acidization.

Mr. Rolston: We offer in evidence Exhibit 69.

Mr. Green: Isn't that an old form, Mr. Rolston, that is no longer in use?

Mr. Rolston: I think that's the one we're using now.

Mr. Green: All right.

Mr. Rolston: We want, at this time, if the Commission please,—we understand all orders covering the Guymon-Hugoton Pool have been introduced.

Mr. Pruet: I think they have,—if they have not I'll agree that they may be supplied at any time.

Mr. Rolston: This order Number 17528, marked Ex- [fol. 727] hibit 70, I ask if the special order has been introduced by you?

Mr. Pruet: I understand three orders have been issued and I think all three have been introduced, and, if not, I'll agree they may be supplied at any time.

Mr. Rolston: This is the only copy of it that we have.

Mr. Green: Do you want to introduce all of that order or just part of it?

Mr. Rolston: I want to introduce it all,—I understand it is the practice of the Commission to put them in.

Reporter's Note: Exhibits 69 and 70, respectively, are attached immediately following the oral testimony and in proper numerical order.

Q. Mr. Stuntz, you have testified now, as I recall, that the gas we purchase in the Guymon-Hugoton Pool is by written contract?

A. That's right.

Q. Would it be possible for us to supply our markets and perform these contracts without the gas from the Guymon-Hugoton pool in Texas County, Oklahoma purchased there?

A. No.

Q. I am not sure I asked you,—have there been any dry holes drilled out there?

A. I think there have been in various parts of Texas [fol. 728] County, but I don't know of any right in the producing area.

Q. How far is it, if you know, from the Guymon-Hugoton pool in Texas County, Oklahoma, to a principal market for gas. Putting it another way,—what is the closest market, that is, sizeable market for gas?

A. About three hundred miles.

Q. Do you know, Mr. Stuntz, whether or not the Hugoton pool is the most remote gas pool from a sizeable market, or not,—like Houston, Kansas City?

A. Yes, it is.

[fol. 729] Cross-examination.

By Earl Pruet:

Q. This gas field down here in Texas is further away from market than the Hugoton Field?

A. Not very much.

Q. Its further away isn't it?

A. I doubt it.

Q. Is that map to scale?

A. I think so.

Q. Where do you say is your sizeable market?

A. Wichita, Kansas.

Q. Do you say that this Guymon-Hugoton Field is further away than in Texas?

A. I believe so, the way it goes.

Q. You mean because the Hugoton Field gas goes east to Blackwell and then on north?

A. Yes.

Q. Do you have anything to do with the negotiating of the contracts for gas?

A. Yes.

Q. What part do you have to do with that?

A. Well I have a little bit to do with all of it.

Q. As a matter of fact Mr. George Baird does the negotiating?

A. He signs it.

Q. Doesn't he do it all?

[fol. 730] A. Some of it.

Q. How much acreage under lease and mineral ownership as I understand part of the Cities Service ownership is mineral ownership and that they have not leased it to anyone else?

A. That is right.

Q. How much minerals does Cities Service own that is not under lease to any other individuals, they own the minerals and leases?

A. 64,883 acres.

Q. How many locations would that be with the right of one well to 640 acres?

A. 100.

Q. 100 locations?

A. Yes.

Q. How many have been drilled out if you know?

A. One has been, or is being drilled now.

Q. How long have you held those mineral interests?

A. About eight years.

Q. How many acres of oil and gas leases does the Cities Service own?

A. 102,463.9.

Mr. Cullison: In Guymon Field?

Earl Pruet: In Texas County?

A. 102,463.9.

[fol. 731] Q. How many locations would that be at the rate of 640 acres to the well?

A. About 160.

Q. How many of these have been drilled?

A. 123 are producing, one is drilling now and another one is set with pipe and another one is started.

Q. You have contracts with other companies for the production of gas?

A. Republic Natural Gas Company, Skelly, Harrington and Marsh.

Q. How many acres — have leases has the Republic dedicated to your pipe line by contract?

A. About 96,000.

Mr. Cullison: We omitted one phase, we want to bring it out with this witness.

Joe Ralston conducts redirect examination:

Q. This gas that is produced from our wells and the gas that is purchased from other producers in the field, do you know whether it is a continuous flow from the well to the market?

A. Yes it is.

Q. Is it interrupted?

A. Very seldom.

Q. What do you mean by "seldom"?

A. You might have to shut down for a few hours for pipe [fol. 732] line repairs.

Q. Outside of that is it interrupted?

A. No sir.

Q. Is it a continuous flow?

A. Yes, sir.

Q. At the place that we get title to the gas purchase is there any interruption there?

A. Only in emergencies.

Q. You mean stoppage of the line?

A. Blow out of the line or connecting in a new line.

Q. From the time you get title of the gas, it is not interrupted to the market?

A. That is right.

Q. The markets are where?

A. In four states.

Q. That is all.

Recross-examination.

By Earl Pruet:

Q. How many wells have Republic connected and producing wells to your line?

A. I believe the last report was fifty-six.

Q. How many undrilled where locations are in Republic acreage if you know?

A. Well——

Q. 94 undriiled locations is that about right?

[fol. 733] A. That is about right.

Q. How many acres of Skelly acreage is dedicated to your pipe lines?

A. Approximately 47,000.

Q. How many wells?

A. Now?

Q. Yes.

A. 38 connected, we are drilling some more.

Q. How many remaining possible locations are there on the acreage at the rate of 640 acres to a well?

A. About 40.

Q. 40 undrilled wells?

A. Yes.

Q. Are you familiar with those contracts?

A. Yes.

Q. The Republic and Skelly contracts both provide that the price is 4½ cents delivered to your pipe line?

A. That is right.

Q. And that there be no increase for the life of the lease?

A. The Skelly provides that——

Q. Doesn't Republic give that?

A. In the price is—renegotiated—every five years beginning with March 1st, 1951.

Q. The Skelly isn't renegotiable?

[fol. 734] A. Not if you pay anyone one any more, they get it anyhow.

Q. The Republic contract is subject to renegotiation each five years?

A. Yes.

Q. And it provides that all of the acreage is dedicated for the life of the lease?

A. That is right.

Q. And the Skelly contract has a provision that it is at the price of 4½ cents and at each 1000 cubic feet?

A. That is right.

Q. And the only way they get more is you pay some one else more?

A. Yes.

Q. And Republic renegotiates at the end of five years?
A. Yes.
Q. The Skelly contract was before we filed this lawsuit?
A. Yes.
Q. And the Republic contract was made after we filed the lawsuit?
A. The present one.
Q. The one that provides for renegotiations?
A. That is right.
Q. You had one with Republic before this lawsuit was filed, one that was identical to Skelly?
A. No.
[fol. 735] Q. It provided that it was dedicated to 4½ cents for the life of the lease?
A. No.
Q. What was it?
A. It is a temporary written contract.
Q. After it was filed—then you had Don Herrington's?
A. Yes.
Q. And it provided his acreage wasn't dedicated for the life of the lease?
A. No.
Q. He can disconnect any and all of his wells on a sixty day notice?

Mr. Cullison: We object to that because that is a conclusion of law and he is a layman.

Earl Pruet: We ask that he produce all of his contracts in the Guymon-Hugoton Field.

Mr. Cullison: We object to that, because Mr. Pruet is going into something that he doesn't know about.

Chairman Bond: Do you gentlemen wish to argue the question?

Mr. Cullison: Yes Your Honors.

Whereupon an oral argument was had off the record.

(Back on the record.)

Mr. Pruet: We now demand since they have testified by [fol. 736] this witness what the price is and what they have been paying people for the gas that they now produce. Authentic copies of gas purchase contracts with Skelly, now in effect; gas purchase contracts with Republic now in effect and gas purchase contracts with Don Herrington now in

effect to that they can show that there is no compeditive market and no chance for compeditive market. They agreed to produce them before trail and they haven't produced them and they should now have them.

Mr. Cullison: I don't want to get into an argument. There has been testified to what we are paying to these persons, to this person and the other person, now he is trying to go into something else and get all of the contracts. All we want to show is the market price, we served notice on them to show the cost of the lease and your honors held that it should be done. If he wants to show what he asks and this man has not truly stated the market price, that is one thing. But he is going into a lot of col-ateral things. We are not ashamed of the contracts, it will all be in the record, I don't think there is any reason to make us bring the contracts in.

Chairman Bond: If the witness knows the value that you [fol. 737] are paying, this witness can testify.

Mr. McBee: A contract price is not a compeditive price, we want the contracts.

Earl Pruet: You testified what you are paying. We are asking that you produce the contracts so that the Commission can see if that is a parket price out there. You have enough undrilled locations to supply the market demand, you can drill it or leave it, there is no such a thing as a market price and we think that this is highly competent.

Mr. Cullison: That will all be shown by this witness.

Earl Pruet: We can't produce the contracts, we have no control over them.

Mr. Cullison: They want the contracts to show other things. As a matter of cross-examination, I don't think that it is competent.

Chairman Bond: This witness has testified what he is paying for gas to certain companies, out there for certain products, that is competent, that is the price that he is paying, the notice — is being served on the applicant is entirely different. It is a price—but there are other things that this Commission is entitled to know, besides the price being paid for gas out in the field there. Mr. Pruet, if you can [fol. 738] prove it, and these contracts are records that are required, the Commission will require them to produce them for examination for one purpose only.

Earl Pruet: They testified what the market price and market value was—they have paid certain amounts under con-

tract. We have the right to have the contracts to show by what virtue this contract is for, they have these reserves. It goes to the question of whether there is a competitive market.

Mr. Cullison: If its going to require a lot of time, I will withdraw my objection.

Earl Pruet: Can you produce these contracts?

(Witness): I have two of them.

Earl Pruet: If you will Skelly and Republic we will produce the other ones.

Earl Pruet: We offer in evidence, Exhibit 71, the Cities Service Contract and as Exhibit 72, the Republic Contract.

Chairman Bond: Received.

Earl Pruet continues examination of the Witness:

Q. Do you have judgment as to the number that you would consider if drilled out, producing gas wells located in the Guymon-Hugoton Field in Texas County, Oklahoma?

[fol. 739] A. No I have not figured that out.

Q. I wish you would, the only producer would not amount to a very depreciable acreage as Peerless?

A. Panhandle Eastern.

Q. They are a pipe line company themselves?

A. Yes.

Q. So the only corporation that has acreage that isn't a pipe line company or hasn't a pipe line company or hasn't a contract is who?

A. Well, Cities Service Oil Company.

Q. Cities Service Oil Company?

A. Yes.

Q. How much do they have?

A. Fifty or sixty thousand acres.

Q. And Peerless has over one hundred thousand acres and are the only ones that have unconnected wells with productive or non productive acreage in any amount?

A. Yes.

Q. The acreage is—the Cities Service Oil Company has the oil acreage rights and the gas company has the gas rights?

A. Some has one and some has the other.

Q. How much gas acreage does the Cities Service Oil Company have leases on?

A. I will have to look that up.

[fol. 740] Q. I wish you to get that—now if you have Herrington and Peerless under a dedication acreage, you would have all of it in the field, not owned by a pipe line company?

A. We would have a good start on it.

Q. And you would have a good chance of keeping the price down to four and a half cents for the life of the field?

A. No.

Joe Ralston: In view of the fact that Mr. Pruet has introduced in evidence before this Commission, the contract that we have, for the purchase of gas in the Guymon-Hugoton Pool in Texas County, Oklahoma this shows those contracts and each one of them shows the terms and conditions under which we purchased the gas and in our pleadings that we filed with the Commission we offered to purchase gas from Peerless Oil and Gas Company, at the same terms and *comditions* as from other sellers in the field. That is in compliance with the Commission order that all purchasers comply with the Common Purchasers Act and by reason of the facts that he has introduced same, we now move the Commission to dismiss this phase of the Judicial Phase of this as evidence clearly shows that we have offered and now offer to purchase under the same conditions as set forth and under the order of the Commission and these contracts.

[fol. 741] Chairman Bond: Overruled. Exceptions allowed.

Earl Pruet: His statement is inadvertently incorrect except one thing, Skelly Oil Company contract was for the dedication of the life of the lease for 4½ cents per thousand feet and the only possibility is if the Cities Service Gas Company paid a higher price to anyone else—we were not offered a contract any way as good as Herringtons—they have a dispute.

Joe Ralston: If Mr. Pruet is going to testify, he should be sworn. In our pleadings we made an offer, and they had an opportunity to take that gas upon the same terms and conditions that the others have, he introduced those contracts and he is bound by them.

Earl Pruet: Whenever you introduce anything in cross-examination and the witnesses evidence, on the part of the person who put him on, then you are the one bound by his statements.

[fol. 742] Mr. Pruet:

Q. Now, you say you have a contract with Don Harrington, is that Don Harrington and Marsh?

A. Harrington and Marsh.

Q. How many acres do they have, if you know, of leases?

A. Well, that contract only covers nineteen wells.

Q. It gives them the right to connect such other wells as they see fit to from time to time.

A. Yes.

Q. Well, do you know how many acres of leases they have?

A. About seventy-five thousand.

Q. If they have nineteen wells, how many possible undrilled locations does that leave?

Mr. Cullison: We object, not tending to prove any issue. He positively answered that the contract only covered nineteen wells, therefore nineteen sections.

Mr. Pruet: We will withdraw it.

Mr. Pruet:

Q. Now, do you know how much acreage Panhandle Eastern of leases it owns out there?

A. No, I don't know, but it is quite a large amount, around eighty thousand.

Q. Do you know how many producing wells that they own, that they have connected?

A. One—well, I don't know of any they have connected,—they sold one to Harrington & Marsh and they have it connected now.

Q. They have, so far as you know, no producing wells [fol. 743] that they have connected, is that right?

A. That's right.

Q. They are a pipe line company that transports natural gas out of that field, aren't they?

A. Well, all they get in that field now is what they buy from Southwestern.

Q. Do you know how many wells of the Southwestern that they have connected?

A. Well, the connection is between Southwestern Pipeline system and Panhandle Eastern system.

Q. Not by wells but by——

A. Pipe line.

Q. How many wells has Southwestern Public Service Company out there?

A. Four, I think.

Q. Do you know how much acreage they have of leases?

A. Four sections.

Q. They have four sections and four wells.

A. They may have more. That's all I know.

Q. Do you know how many producing wells Phillips Petroleum Company has?

A. I believe they have forty some connected and others that aren't connected.

Q. Are they selling all their gas or do they pipe part of it themselves?

A. They gather it and deliver to Panhandle Eastern. [fol. 744] That's the only customer that I know of.

Q. Do you know how much acreage Phillips has out there?

A. No, I don't remember how much is on that contract. Then they have a lot of acreage that isn't on that Panhandle Eastern contract.

Q. What do they do with that, with the other acreage? Do you know what they do with the gas taken from the other acreage?

A. I don't think they have any wells on the other acreage.

Q. All their producing wells are connected to the Panhandle Eastern.

A. As far as I know, they are.

Q. I believe you referred to the sale of that gas of Phillips and gave the figure for which they are selling it.

A. Four cents.

Q. That is four cents delivered to *Payhandle* Eastern.

A. That's right.

Q. That gas is gas which has all been stripped for gasoline, isn't it?

A. I don't know which of the companies is stripping it, I believe either one has the right to.

Q. Does Phillips have what they call a stripper plant or cracker plant in the field?

A. I haven't been down to their plant. I don't know.

Q. What did you say was the total number of producing wells in the field?

A. I didn't say.

[fol. 745] Q. Do you know?

A. About three hundred.

Q. Of those you have one hundred and twenty-three producers of your own, you have connected fifty-six wells of Republic, you have connected thirty-eight wells of Skelly, you have connected or arranged for connection the nineteen wells of Harrington & Marsh,—two hundred and thirty-six out of the three hundred that you have connected with your system.

A. That's right.

Q. That will be practically eighty percent of the wells in the field.

A. Yes.

Q. Now, referring back to your exhibit 68, you are buying at this time natural gas from three different producers in that field.

A. We will be as soon as Harrington & Marsh gets their line in.

Q. How many different producers are you producing from in the Cement field?

A. We just purchase from one.

Q. What one do you purchase from there.

A. Ray Stephens, Incorporated.

Mr. Cullison: We object to that as immaterial, injecting a collateral issue.

Chairman Bond: What connection has the Cement field?

Mr. Pruet: Type of business they are doing in Oklahoma, I want to prove the different number of people they are [fol. 746] purchasing from in the State of Oklahoma; that goes to the type of business and it is very competent on this question of common purchaser.

Chairman Bond: You may offer the testimony on grounds of a common purchaser but it wouldn't have any other probative value in this case.

Mr. Pruet: The statute says they can't discriminate as against one common source of supply as agains- the other.

Mr. Cullison: Doesn't the statute say 'unreasonably discriminate'?

Mr. Pruet: That will be the question for the Commission to determine.

Mr. Pruet:

Q. Do you know how many different producers you purchase gas from in the State of Oklahoma?

A. About fifty.

Q. About fifty different common producers of natural gas; this Hugoton-Guymon-Hugoton field you have shown on the map includes some area in Texas and some in Kansas.

A. It does.

Q. The same common source of supply, is it?

A. Yes, sir.

Q. Now, you have also made contracts to purchase natural gas in the Hugoton field from Magnolia Petroleum Company and Stanoling Oil & Gas Company, in which you agree to pay six cents per thousand cubic feet.

[fol. 747] Mr. Cullison: We object as incompetent, irrelevant and immaterial, not tending to prove any issue in the case or tending to establish the market price in this field.

Chairman Bond: Overruled.

A. Yes.

Mr. Cullison: Exception.

Chairman Bond: Exception allowed.

Mr. Pruet:

Q. Now, from where this pipeline starts out here in the Guymon-Hugoton field, it goes east, does it have any interconnection with this line that comes across here from Texas?

A. There will be another man to tell you for sure about that. I don't know.

Q. What I am getting at, if you don't know about that I won't ask any more questions about that. I want to find out if you pipe any gas in this line here (indicating) that goes into Kansas; what happens at this connection, and what happens here and all along the line while it is in Oklahoma?

A. As far as I know we don't take any gas out of this Guymon-Blackwell line into this line (indicating) except in cases of emergency.

Q. When you say 'over here' you mean the Panhandle line, that is the line runs northeast to Wichita, Kansas?

A. That's right.

Q. It comes over here (indicating) and intersects this [fol. 748] north and south pipeline in Kay County,—is there any gas sold or disposed of there from that line?

A. The company sells some gas at Blackwell. I don't know which line it comes out of.

Q. Bells it to the City of Blackwell there.

A. No, to the Consolidated.

Q. And the Consolidated distributes it in Blackwell, is that the idea?

A. Well, they have a distribution plant in Blackwell.

Q. You do sell natural gas there at that location or near Blackwell to the Consolidated Gas Utilities Company which has a distribution system there in the city of Blackwell.

A. I think that's right.

Q. And also in Tonkawa, is that correct?

A. Yes, sir.

Q. If you don't know about this and somebody else does I can ask him; if you do know probably save a little time by asking you about it. The distributor in Blackwell and Tonkawa sells gas to the public for light, heat and power.

A. Yes.

Q. Do you know whether or not there is any gas transferred from this east-west line out of Hugoton to the North-south line out of Blackwell?

A. There is, going north.

Q. There is some transferred into the line going north, that line going north goes into a storage field in Okla- [fol. 749] homa on this side of the line.

A. No, that's not right.

Q. Which one is storage?

A. The blue one.

Q. That is another field there? (indicating)

A. That is the Dilworth field.

Q. From the point where this north-south line leaves there going north towards Kansas, do you dispose of any gas on that line or any interconnected line between there and Kansas?

A. I believe not, unless it's some farmers on account of right of-way contracts.

Q. I notice from this point of intersection with the Guymon Hugoton line you go east from there, there are two pipelines. What does that mean?

A. One is a twelve inch and one is sixteen inch, parallel lines.

Q. I see a couple of red stars apparently near Shidler, what does that mean, on those two pipelines?

A. We have connection with the Kay county system.

Q. What does the Kay county system do?

A. Kay County system supplies Ponca City, Newkirk and some other towns, but that connection that is still in there is only for emergency use.

Q. Branch off—after those two pipelines pass Shidler there is two lines going off southeast, come down here (indicating) from some other town, is there any gas sold between those points?

[fol. 750] A. There might be some at Pawhuska.

Q. That would be sold there to the distribution company for resale to the public for light, heat and power, wouldn't it?

A. Yes, sir.

Q. What is this where these two lines come together in the southeast, in this orange colored field near Barnsdall, what do you have there?

A. Compressor Station.

Q. What are these lines that come back to the southwest, is that a gathering system?

A. Yes sir.

Q. You gather the gas there in that field, all of which you purchase as I understand it, is that right?

A. That's right.

Q. You got a line that goes from that point near Barnsdall northeast, another one goes east, then north, got another one that goes back to the southwest,—that line going back to the southwest, is that a gathering line?

A. Yes.

Q. Now, is there natural gas that comes from Hugoton that goes on these two lines to the Southwest to Barnsdall?

A. Yes, sir.

Q. Part of it goes on this other line that goes northeast to the Caney station.

A. Yes, sir.

[fol. 751] Q. So there is gas you purchase or buy in the Guymon-Hugoton field that is resold in the State of Oklahoma to the public for light, heat and power, isn't there?

A. Very small amount, yes, sir, it could be that way.

Q. Now, you spoke of the sales of gas to the City of Guymon, Republic selling natural gas to the city of Guymon, do you know what they get for that gas?

A. Five cents.

Q. Five cents per thousand—Southwestern Public Service Company wells natural gas to local cities out there, do you know what they get for that gas?

A. No, sir.

Q. You said you have figured the weighted average, which you call also the market price of gas in the Guymon-Hugoton field, is four and one-eighth cents per thousand cubic feet, would you mind to submit as part of this record your figures on that?

A. Yes, sir.

Q. Does that include the sale of gas to the city of Guymon and the sale of gas by the Southwestern Public Service Company to other cities out there?

A. It includes in the first seven months of this year, it includes all the gas that the Southwestern ran and which was reported to the Commission.

Mr. Cullison: Let the record show he did deliver to you what you requested.

Q. (Mr. Pruet): This instrument marked No. 74, are the figures you used in arriving at four and one-eighth cents [fol. 752] per thousand cubic feet as the weighted average price paid in the Hugoton field, that doesn't include then, according to the exhibit itself, the price at which Republic sells gas to the city of Guymon or which Southwestern Public Service Company sells gas to other towns or cities out there.

A. A very small sale of Republic isn't in there at all but all the gas that the Southwestern Public Service Company handled is in there.

Q. You don't include in that any of the six cent purchase you made, that the Cities Service Gas Company made from Stanolind Oil & Gas and Magnolia.

A. Haven't made any yet.

Q. In other words, you made that contract but you made no deliveries as yet, is that correct?

A. That's correct.

Mr. Rolston: I object to that last line of questioning concerning this Stanolind contract. That was in Kansas and this case is concerned with the price of the Guymon-Hugoton pool in Texas County, Oklahoma.

Chairman Bond: If it has to do with the price, it should be confined to Oklahoma,—if it has to do to show you are

a common purchaser or common carrier it might be admissable in any case.

Mr. Rolston: The jurisdiction of Oklahoma doesn't extend into Kansas.

Chairman Bond: That is true, but if you are perform-
[fol. 753] ing the same duties in Kansas as you are in Oklahoma, if you are purchasing gas out there as a common purchaser and carrying it as a common carrier, it might be admissible to show that you are a common purchaser or common carrier.

Mr. Cullison: Does Your Honor confine it to that phase?

Mr. Pruet: He testified, and their map shows that they have included in there the system, the entire system, the entire Hugoton field, both in Kansas, Oklahoma and in Texas. That is in their exhibit and in his testimony and he has testified also that the whole thing is in one common source of supply. Now, what is paid in Kansas for gas certainly wouldn't be binding on this Commission, it certainly would be evidence as to the market value of it in that field,—the fact that right over the line they are paying six cents or contracted to pay six cents a thousand cubic feet for the gas. It has probative value on the price, it certainly goes to the credibility of the testimony when he says six cents,—what efficacy is it, over the state line it is worth two cents more a thousand cubic feet in Kansas when it is closer to the market in Oklahoma.

Mr. Cullison: On the question of closer to the market I think perhaps the remarks are pertinent. You know a
[fol. 754] lot of things influence the price of gas, ad valorem tax, sovereign tax, gross production tax, they are different. There is no presumption they are the same in all states. It is a collateral matter that hasn't any probative effect as to the point in issue,—if it be confined to the question whether we are a common carrier——

Chairman Bond: His main purpose was to confine it to common carrier or common purchaser. We get too far apart when we cross state lines because one state may have a price fixed by an administrative body or by a court.

Mr. Pruet: We all know Kansas never fixed a price. In Kansas it hasn't got by the talking stage. There hasn't been an application made. We think it is a circumstance that should be in the record on the question of price that they are paying or contracted to pay six cents a thousand cubic feet, a cent and a half more, and right across line.

Chairman Bond: You may dictate into the record what you expect to show. We will overrule it, you can save your exceptions.

Mr. Pruet: *Alright.* We offer exhibit No. 74 as part of the witness' testimony.

Chairman Bond: Received.

[fol. 755] Whereupon Exhibit No. 74, so offered and received is made a part of this record.

Q. (Mr. Pruet): You stated somebody was piping gas out of the Vanderpool field in Washington County, Oklahoma, in 1908, do you know who that was?

A. Two of them.

Q. Who were they?

A. Kansas Natural Gas Company and the Wichita Natural group.

Q. They were separate corporations and separate entities.

A. They were, I am speaking of both as a group of them, not as a single company.

Q. Were they borrowed interests or what?

A. Not in 1908.

Q. Do you know the names of the companies or entities that were actually piping gas out of that field in 1908?

A. With the Kansas Natural group it had to be the Kansas Natural Gas Company or Marnett Mining Company.

Q. Now the Wichita Natural group, what group would that be?

A. Wichita Natural Gas Company and Wichita Pipeline Company.

Q. And the successor of the—you didn't mean to say—what is the relationship between those companies and Cities Service Gas Company.

A. They are the predecessor company.

Q. You mean the Cities Service bought their properties?

A. Predecessor companies was all.

Q. Predecessor companies of what.

A. Cities Service Gas Company.

[fol. 756] Q. Then the Empire Gas & Fuel Company just bought the properties of the Kansas Natural Gas Company, the Marnett Mining Company, Wichita Natural Gas Company and the Wichita Pipeline Company.

A. And others.

Q. The Empire Gas & Fuel Company wasn't doing business in the State at that time, was it, hadn't qualified had it?

A. I don't think it had.

Q. It didn't qualify until the date that is shown in the record in this case.

A. If it is shown, that's right.

[fol. 757] Q. Now, you testified about the Federal Power Commission,—I will ask you if it isn't a fact that the Federal Power Commission made a finding of excess profits on the part of the Cities Service Company such as would amount to a difference of about seven cents per thousand cubic feet at the wellhead in Oklahoma?

A. Repeat that——

Counsel for Cities Service Gas Co: We object to that as incompetent, irrelevant and immaterial, not proper cross examination and proves no issue.

Q. The amount I had in mind was about five million, but Mr. Stuntz testified at another hearing that the excess profits found by the Federal Power Commission, in 1941, was $4,400.00?

A. (No answer.)

Q. All right,—and at the well head that would amount to about seven cents per thousand cubic feet?

A. I don't know.

Q. Well, you testified to that at a previous hearing, didn't you?

A. No, sir—I don't remember it.

Q. Anyway, at four and a half cents per thousand cubic feet that's lots of gas, isn't it?

A. Yes, quite a lot of it.

Q. Has not that compressor station out there at Guymon-Hugoton been stopped or out *og* electrical energy and power a considerable number of times?

[fol. 758] A. Yes.

Q. It has been stopped a considerable number of times, hasn't it?

A. Quite a number of times.

Redirect examination.

By Mr. Rolston:

Q. Now, he inquired of you about the order made by the Federal Power Commission, the order of reduction,—was

that prior to the time this suit was filed by Peerless against us?

A. Oh, yes,—long before that.

Q. Prior to the construction of the Hugoton line?

A. Yes, sir.

Q. Prior to the construction of the Hugoton line from Blackwell to Guymon?

A. Prior to its completion, I'm sure,—I don't remember the exact date of it.

Q. You are aware of the tender that was made by the Peerless Oil and Gas Company to Cities Service Gas Company, are you not?

A. Yes.

Q. Do you know at what price they tendered it?

A. Six cents.

Mr. Pruet: That's in evidence.

Mr. Rolston: I'm asking him for the purpose of another question.

Q. Do you know whether Peerless Oil and Gas Company at that time was selling their gas to anybody else at the Guymon-Hugoton pool?

[fol. 759] A. At what time?

Q. At the time they tendered this gas to Cities Service Gas Company at six cents?

A. Yes, I think they were selling some——

Mr. Pruet: We object to what he thinks.

Q. At what price?

A. 4½ cents.

Mr. Pruet: If he was selling it at that price—the Commission order was five cents.

Q. Do you know how much money the Cities Service Gas Company has expanded in the aggregate to construct this line, the field compressor, compressor stations, and to adjust its system to accommodate the gas from the Guymon-Hugoton pool in Texas County?

A. Yes.

Q. How much?

A. Approximately $15,000,000.00.

Q. Do you know how much proven acreage there is in the Guymon-Hugoton Field in Texas County?

A. Yes, sir.

Q. How much?

A. Approximately 1,062,000 acres.

Q. How much of that aggregate amount does the Cities Service Gas Company own and produce gas from?

A. About three-tenths of it.

Q. Do you know who owns the rest of that acreage?

[fol. 760] A. Peerless Oil and Gas Company,—Harrington & Marsh,—Pan-Handle Eastern Pipeline Company,—Cities Service Oil Company,—Cabot Carbon Black,—J. L. McCormick,—Phillips Petroleum Company,—Stanolind Oil & Gas Company, and a good many others in small amounts.

Q. How about Southwestern?

A. Yes, Southwestern owns some.

Q. Now, what effect on the price of gas has distance to market, if any,—how does distance affect or what has distance to do with the market?

A. Well, the closer the gas production is to the market, the higher the price, and the farther away it is the greater the tendency to a lower price.

Q. Now, I inquired of you in your direct examination, concerning the Well Record Report that was made to the Commission, and I handed you Exhibit 69, which was introduced in evidence.

A. That's right.

Q. Mr. Green suggested that might be an old form,—have you found out that it is?

A. Yes, it is.

Mr. Rolston: Now we want to withdraw Exhibit 69 and we will substitute therefor Exhibit 75, and we offer Exhibit 75 in evidence.

Chairman Bond: That may be done.

Reporter's Note: For reasons stated, Exhibit Numbered [fol. 761] 69 is delated.

* * * * Exhibit 75 is attached with other exhibits, in numerical order, following oral testimony in this record.

Q. Mr. Pruet inquired of you concerning a contract with Stanolind Oil and Gas Company, in Kansas. I believe you said the price was six cents?

A. Yes.

Q. How much money would Stanolind have to spend to comply with that contract?

A. Well, a very large amount, because Stanolind and Magnolia both agreed to deliver the gas to our compressor station at their own expense and they also agreed in that contract to deliver the gas at the point of delivery at a maximum pressure of 260 pounds, also at their own cost.

Q. Do you have any judgment as to the amount of money they would have to expend?

A. Do you mean to drill wells?

Q. I mean to comply with the contract.

A. Somewhere between four and five million dollars the first year.

Q. That's part of the contract,—does that have anything to do with the price agreed upon?

A. It has a lot to do with it.

Recross-Examination.

By Mr. Pruet:

Q. Do you only allow one-half cent up there for putting [fol. 762] it in the pipeline?

A. No, it's full price of seven cents, six cents, and nothing said about gathering.

Q. Is it seven cents or six cents?

A. Six.

Q. Stanolind is going to build a Fischer-Tropsch plant up there, are they not?

A. I understand they are.

Q. Who is the other party, with Stanolind, in this contract?

A. Magnolia.

By Commissioner Armstrong:

Q. Where does Magnolia and Stanolind produce this gas up there?

A. Well, some of Magnolia's acreage is in Stevens County, but most of it is in the county east of it and in the county west of it.

Q. That is all in what is known as the Hugoton Field?

A. Yes, sir.

By Mr. Rolston:

Q. Let me ask you again, about this Fischer-Tropsch,—that's all separate from our contract?

A. That's a separate proposition from our contract.
Q. That's a separate matter?
A. Yes.

Examination.

By Mr. McBee:

Q. Do you know whether there is any consideration given in fixing the price, for determining what the price is, to [fol. 763] the matter of liquid hydro-carbon substances in the gas?
A. The gas in this Skelley, Republic, Harrington, *Morris*, contracts is produced "in its natural state of production".
Q. Do you know whether there is any value in the liquid hydro-carbon substance?
A. Very little, if any.
Q. Are there any arrangements or provisions made in any of the contracts of purchase in the Guymon-Hugoton Field, with reference to liquid hydro-carbon substance?
A. No, there couldn't be and still buy the gas in its natural state of production.
Q. You make no reference whatever to the liquid hydro-carbon substance?
A. We make provision for it,—it's included in the purchase,—yes.

The witness is excused.

[fol. 764] JOHN GERE, called as a witness, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Rolston.

Q. State your name to the Commission.
A. John Gere.
Q. Where do you live, Mr. Gere?
A. Oklahoma City.
Q. What official position, if any, do you hold with the Cities Service Gas Company?
A. Operating Engineer.
Q. Are you a graduate in engineering?

A. Yes, sir.

Q. Secured a degree from what institution?

A. I have a B.S. in Mechanical Engineering from the University of Nebraska.

Q. How long have you been employed by Cities Service Gas Co.?

A. Since 1927,—nineteen years.

Q. What has been your experience, as to the various departments and phases of the business?

A. At various times I have worked in construction, in the pipeline department, operation and maintenance of the lines—in the meter department as Chief Meter Inspector and also some time in the Pampa office, as Production Engineer in that area.

Q. Are you familiar with the methods of measurement of gas in gas purchase contracts?

[fol. 765] A. Yes.

Q. Do you know whether there is an accepted and approved practice in the industry, with reference to the measurement of gas?

A. There is.

Q. Will you tell the Commission what it is?

A. In the Midcontinent area, with the exception of a few contracts,—those involving the Government,—it is almost universally on a 16.4 pressure basis,—16.4 absolute pressure basis.

Q. Can you explain that a little more in detail?

A. Well, the gas is usually measured at the meter, under prevailing meter pressures and in these contracts it is specified that the pressure shall be 16.4 pounds absolute and at a temperature of 60 degrees, and the gas is measured at that volume.

Q. Does that have anything to do with the price?

A. The price, of course, is negotiated on that basis.

Q. Is that the accepted and approved method in contracts, of measuring gas, in contracts for the purchase of gas in the Mid-Continent Field?

A. Yes, it is.

Q. Do you know how long that practice has been in effect?

A. That practice has been in effect since before my time. I suppose it goes back to the beginning of the Field, and on back to 1915 and 1916, some of them to my knowledge contain that pressure basis clause.

Q. Could you, Mr. Gere, calculate a price without a pressure basis?

[fol. 766] A. There could be no price without a pressure basis,—you wouldn't know what you were talking about.

Q. Can you explain that a little more in detail?

A. Well, its just the nature of gas,—if you were selling at 100 pounds you would know there was a lot more sold than at 16.4. The volume of gas is in proportion to the pressure. If you had one cubic foot at one pound pressure absolute you would have twice as much gas at two pounds absolute.

[fol. 767] Q. Now that is a different pressure and different field?

A. Sir?

Q. Different pressures and different fields?

A. Yes sir.

Q. Does that have anything to do with it?

A. You can't measure the different pressures if you have to put them on a common pressure basis.

Q. There has to be a pressure basis?

A. Yes.

Q. Does the atmospheric pressure vary in the different fields?

A. Yes in different localities and the same localities due to conditions.

Q. What would be the condition if you don't have a uniform basis?

A. Well there will be quite a state of confusion, you will have nothing to refer to as a common basis, you would not know how to compare anything if you don't have to refer to a common basis.

Q. Do you know if there is in effect any rule or regulation of any public body in Oklahoma that prescribes the method of measurement of gas?

A. Not of method of measurement, there is a rule to report gas to the Commission here.

Q. What is that if you know?

[fol. 768] A. I believe that was changed from a 2 pound basis or 16.4 or 14.65.

Q. Does that have anything to do with the sale of gas?

A. No that is the reporting here for the Commission, everything is reported on the same basis.

Q. Your answer to the question then is that there is no regulation?

A. Not as to measurement, you can make a contract at 16.4 or 20 pounds or any basis.

Q. The method of measurement is a matter of contract, is that right?

A. That is right.

Q. And what our company does is that the accepted and approved practice in the industry under the gas purchase contract?

A. I believe it is, there are no exceptions taken to it in any of our deliveries, we agree on that basis.

Q. Are all our contracts on that basis?

A. With very few exceptions that I mentioned to begin with.

Cross-examination.

By Earl Pruet:

Q. What is atmospheric pressure?

A. The absolute pressure that prevails wherever you are.

Q. What is the atmospheric pressure in the Mid-Continent area?

A. It varies considerably—its 14.4.

[fol. 769] Q. Now if you measure gas at a pressure base of 16.4 you get more gas in each cubic foot so measured than you would at 14.4 or atmospheric pressure?

A. Well assuming 14.4 is atmospheric pressure.

Q. Measure gas at 16.4 you are going to get more gas in each cubic foot so measured then you would get in natural gas measured at 14.0 is that correct?

A. Yes.

Q. Do you know what pressure basis you sell your natural gas in the Mid Continent Area?

A. Yes sir.

Q. What?

A. Eight ounces above 14.4 or 14.9.

Q. Then you buy it at 16.4 by which method you get more gas but when you turn around to sell it you sell it at 14.4 plus 8 ounces?

A. That is correct.

Q. Then the guy that you sell it to he gets less gas than 1000 cubic feet?

A. That is right.

Q. What good reason can you give for measuring it when you buy it at 16.4 and then sell it for 14.4?

A. That is a matter of price negot-ation.

Q. That is one way of paying less and getting more? [fol. 770] A. Well you could adjust the prices so you wouldn't have to do it that way, but you wouldn't make any money.

Q. That is easy. That is a way that the Cities Service has that is the payingest way?

A. I think that anybody buying it knows that is the pressure way of selling it.

Mr. McBee Examines the Witness:

Q. You mentioned that there was exceptions to that measurement?

A. That is right.

Q. Where and what manner and where do you find the exceptions?

A. The one to my knowledge that we have is, as the gas is produced as in the Osage, it is measured at a pressure base of 10 oz. above 14.4.

Q. Isn't it a fact and don't you know it to be a fact that all government measurements are measured at 14.4 on Federal Government lands and Indian lands.

A. I am not aware of that fact.

Q. Does your company have any leases on government land or Indian land?

A. I am not fully aware of that.

Q. I will ask you to look at Exhibit 46 and read that paragraph and see if that isn't the regulation that is recognized by the Government, and if that isn't measured at 10 oz. above atmospheric pressure, assuming the temperature at 60 degrees F. on which is the basis on which you sell gas? [fol. 771] Mr. Cullison: The witness has already testified about the Government contracts being an exception.

Mr. McBee: I have already asked him about that.

(Witness continues.)

A. That is what it says. (Witness reads from Exhibit 46.)

Q. I will ask you this Mr. Gear, isn't it a fact that the atmospheric pressure in Texas County Oklahoma isn't something like 13 pounds per square inch?

A. Something like 13.2.

Q. In this part it would be about 14.4 approximately?

A. 14.4—I think 14.2.

Q. Then you would say that the measurement is at 16 in other words, 2 pounds above 14.4, that is a contract provision?

A. That is correct.

Q. And that is shown in harmony with the measurement of gas in the Government regulation?

A. That is right.

Q. I will ask you if you measure gas at 16.4 or two pounds above atmospheric pressure of 14.4 doesn't this amount to approximately ten percent more gas than it would if measured at 14.4?

A. That is about right.

Q. If the gas is measured at a contract price at two pounds above atmospheric pressure that is a method of going above and beyond the rule measurement of gas as recognized by the [fol. 772] United States Government and the Indian Department?

A. It doesn't say anything about the price, the volume will be ten percent more than 14.4.

Witness examined by Earl Pruett:

Q. I believe you said that you practiced this buying at the wellhead at 14.4?

A. In Mid Continent are...

Q. Now your operation, your operation are all in the Mid Continent Area?

A. The plant is.

Q. Where you buy gas is the Mid Continent Area?

A. That is correct.

Q. I have here the report of the Cities Service Gas report with the Federal Power Commission, filed April 1946, 1.481. Note: Line 44, Below production and purchases are measured principally on pressure basis 14.4 plus 2 pounds at 60% atmospheric pressure but substantially quantities are measured on 10 oz. and 8 oz. basis.

A. In substantial quantities I suppose this refers to the land on Osage Indian Lands.

Q. How much gas do you purchase up in the Osage?

A. I think for 1945 it averaged one million to two million a day.

[fol. 773] Mr. McBee examines the witness:

Q. At what price?

A. I think you will have to ask Mr. Stuntz, I know that they have a higher royalty rate up there.

Q. You are familiar with the facts that everywhere in the Osage Nation or Osage County Oklahoma, the price at which all gas is sold is 18 cents per thousand cubic feet?

A. I don't know.

Witness excused.

[fol. 774] Whereupon F. D. FRANK of lawful age, being first duly sworn, testified as follows, to-wit:

Witness examined by Joe Ralston:

Q. State your name.

A. F. D. Frank.

Q. And you have testified before?

A. Yes, sir.

Q. Will you tell the Commision what effect the distance of market has on the price of gas and the source of supply?

A. Your price based upon how far it is to market?

Q. In your testimony the other time you were on the stand you said that you had been production Superintendent for the Cities Service Gas Company?

A. Yes.

Q. And you are now employed by another company?

A. That is right.

Q. Have you had any training and experience or schooling concerning metering?

A. Yes, sir.

Q. Tell the Commission what that was.

A. I was the Gas Measuring Superintendent of Cities Service Gas Company for a period of four or five years, I don't remember exactly the length of time. I was chairman of the gas metering short course at Norman in the year of 1928 or 1929.

[fol. 775] Q. Have you had experience also in schooling as to methods of measurement?

A. Yes, sir.

Q. How is gas purchased?

A. Purchased on a basis measured at the line pressure in the field and reduced to a base.

Q. Is it possible to calculate the price without a base?

A. I don't believe it would but we don't know how to do it.

Q. Do you know whether or not there is an accepted and approved practice in the Mid Continent Area for measuring gas?

A. Gas purchases are sold under a system.

Q. Gas purchases?

A. Yes sir, one for purchase and one for sale.

Q. And then that is what?

A. The method is no different but the base is different.

Q. Now I asked about the purchase can you explain a little more in detail concerning that?

A. Well its purely a contract deal the gas was bought on a 16.4 absolute in the field and sold on a base of 14.9 absolute.

Q. Its all a matter of contract?

A. That is correct and so stated in the contract.

[fol. 776] Witness examined by Earl Pruet:

Q. You learned to do your metering under Cities Service?

A. Correct.

Q. And then you went down to Norman to do it the Cities Service way?

A. I didn't teach them that, there was others there.

Q. You are an exponent of their method, you belonged to that school and brought that method in?

A. That was generally accepted.

Q. It isn't accepted by the Bureau of Mines?

A. That is the base.

Q. We are asking for the base.

A. That is what I said, its in the contracts.

Q. If the Cities Service buys it at 16.4 they get more than 14.4?

A. Yes.

Q. And then they sell it at 14.4 plus 9 oz.

A. That is correct.

Q. They they sell it for less than 1000 cubic feet less than they bought it?

A. Yes, sir.

Q. For every one thousand feet they make 10% gra--tiously?

A. That is correct.

Q. They first save 10% on the purchase price then they [fol. 777] make 10% on the sale price don't they?

A. No.

Q. What profit they make is on the purchase price—10% on the sale price isn't it?

A. Oh, I don't know—you could put it either way if you wanted to.

Q. Any way they don't sell as much gas as the- get per 1000 cubic feet?

A. Sure they do.

Q. You just said——

A. You asked if they sell 1000 cubic feet.

Q. They don't sell as much as 1000 cubic feet, as they do when they buy it?

A. That is right.

Q. There is a difference of 10%?

A. That is right.

Joe Ralston examines the witness:

Q. Its all a matter of contract?

A. That is right.

Mr. McBee examines the witness:

Q. You are not employed by the Cities Service Gas Company?

A. No.

Q. If the purchaser of the gas in the field has 2 pounds above atmospheric pressure and then he sells it at 19 oz. [fol. 778] above, isn't it equivalent of buying it at 66 pounds and selling it at 60 pounds pressure?

A. Yes the same.

Q. If the atmospheric pressure is 13.2 in Texas County, Oklahoma isn't that a greater amount of gas in that pressure at 16.4 than down at the atmospheric pressure?

A. Yes and there is a smaller amount of buying it out there and transporting it down here.

Q. There is more than ten percent out there between 13.2 and 16.4.

A. There isn't a greater percent than here.

Earl Pruet examines the witness:

Q. They don't put that 16.4 in the lease contracts?

A. No.

Q. Then when they come around later to get the royalty owners to sign up the division order they put in there what they sell it for, and the royalty owner is anxious to get his money.

A. I don't understand.

Q. They don't put 16.4 in the lease?

A. No.

Q. They put that in a division order later?

A. They put it on at contract.

Joe Ralston examines the witness:

Q. Do you understand that Peerless Oil and Gas Company wants the price increased?

[fol. 779] A. Yes I thoroughly understand that.

Q. And you understand that they want the method changed so that they can get their price advanced?

A. Yes, sir.

Mr. McBee examines the witness:

Q. And that you would like to have a greater price than the price you sell it for?

A. (no answer).

Joe Ralston: to witness:

Q. Would that be pyramiding?

A. I think it would.

Witness excused.

[fol. 780] GEORGE V. ROWLAND, a witness being called and having been sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination

By Mr. Rolston:

Q. State your name to the Commission.

A. George V. Rowland.

Q. Where do you reside?

A. Wichita, Kansas.

Q. What official capacity do you hold, official position, if any, do you hold with the Cities Service Gas Company?

A. Commercial Manager.

Q. What are your duties and functions with respect to that assignment?

A. My particular job is to negotiate certain main line industrial gas contracts and assist distribution companies which are connected to our lines in their negotiations for industrial contracts, at their request.

Q. How long have you been engaged in that particular type of work?

A. Sixteen years.

Q. Have you made any special study, had any special training outside of the experience you had in the actual work?

A. In what respect?

Q. Have you made any special study?

A. Any special studies of the work there?

A. Yes.

[fol. 781] A. Oh, during the past sixteen years I have made studies of competing purchases and helped for gas sales for commercial and industrial purposes in general.

Q. You also, have you not, read different periodicals and books concerning matters of that nature?

A. Quite right, yes, sir.

Q. Now, in negotiating these contracts for sale of industrial gas, what kind of contracts are those?

A. They are contracts covering the delivery of gas for industrial and commercial purposes.

Q. Now, is there such a thing as direct and indirect sales?

A. Yes, sir.

Q. What is direct sales?

A. Direct sales are made directly from the main line to a customer. Indirect sales, as I use the term, are sales made by the distribution company.

Q. Now, are both types of sales regulated by the Federal Power Commission?

A. Only the indirect sales.

Q. Now, in your negotiation of these direct sales contracts what factors do you have to contend with in making and negotiating such contract?

A. Well, there are many factors,—cost of competing fuels,—competing fuels is one factor, cost of curtailments is another factor, the desirability of market has something to do with it. There are many others you have to stop and [fol. 782] consider when you negotiate a sale of industrial gas.

Q. Are there any other factors that enter into it, load factor have anything to do with it?

A. Yes, some consideration is given to the load factor, some consideration given to the type of load, whether it is a winter load or summer load.

Q. Does that same factor enter into the negotiation of indirect sales that you might assist distributing companies at their request?

A. Yes.

Q. In considering all these factors that you have related, do you attempt to negotiate a contract for the sale of gas to the purchaser, is that right?

A. Right.

Q. Now, can you tell this Commision some of the direct industrial sales contracts that you have, that our company has?

A. Yes, do you care for any particular detail?

Q. No, I want some names of the purchaser, where they are located.

A. Well, I might say this,—we have fifty-five, that is in the year 1945 we had fifty-five large consumers that used over one hundred million feet annually which we served directly from the main line.

Mr. Cullison: Each?

A. Over a hundred million each. Now those are comprised bodily of electric generating stations, cement plants, oil [fol. 783] refineries salt plants, repressuring customers and many others that I haven't enumerated.

Q. What percentage of those direct industrial sales are made in the State of Oklahoma, if you know?

A. I don't think I can give the actual figure on that.

Q. Do you sell more gas industrially outside of Oklahoma than you do in?

A. Yes, I am sure we do.

Q. Do you have any idea as to the percentage?

A. Well, I would make an estimate or make a guess on it,—about twenty percent.

Q. Twenty percent sold in Oklahoma.

A. Yes, of our total direct sales on a volume basis.

Q. And eighty percent sold outside.

A. That's right.

Q. Now, is this all gas taken out of Oklahoma?

A. Well, this is gas out of Oklahoma and Texas and out of Kansas, I presume from our sources of supply.

Q. Now name some of those who are industrial purchaser.

A. Yes, I can name a few of the larger ones, Kansas Gas & Electric Company at Wichita is one, that is an electric generating station; Spencer Chemical Company near Pittsburg, Kansas, is an am-onia plant, am-onian nitride plant; Tide Water Associated Refinery at Drumright is another; Bareco Oil Company, Barnsdall; Empire District Electric Company at Riverton, Kansas and four cement plants in eastern Kansas. I think that generally covers the larger ones except two oil refineries in the vicinity of Augusta and [fol. 784] Eldorado, Socony Refinery at Augusta, Kansas, the Eldorado Skelly Refinery at Eldorado, covers the larger ones. We have fifty-five on the list.

Q. Have you prepared tabulations and statistics covering the direct industrial sales for any year?

A. Yes, I prepared one for the year 1945.

Q. Do you have that with you?

A. Yes, I have it here.

Q. Can you testify concerning that without refreshing your recollection from it?

A. I think a large portion of it, yes.

Q. Now, this tabulation covers what year?

A. Year 1945, calendar year.

Q. What does it purport to cover?

A. It shows the average price obtained from these fifty-five large industrial consumers, in blocks, showing the volumes of gas that we sold at an average price between four and five cents and five and six cents and so on up to eleven and twelve cents.

Q. Well, what is the volume of gas that Cities Service Gas Company sells for direct industrial sales between four and five cents.

A. Between four and five cents, it's a very small amount, possibly less than one percent.

Q. How much do they sell between five and six cents?

A. Also a very small amount, about two percent as I recall the figures.

[fol. 785] Q. How much gas,—is that volume?

A. In volume?

Q. Yes.

A. For what block?

Q. Between five and six cents and four and five cents.

A. I think it's about nineteen million but I would have to refresh my memory.

Q. You may refresh your recollection for the exact figures.

A. Average price, or during 1945 we sold nineteen million, eight hundred and forty-one thousand feet of gas at an average price between four cents and five cents, 4.25 cents.

Mr. Pruet: Are you talking about industrial sales?

A. Direct industrial sales for the year 1945.

Mr. Rolston:

Q. How much volume at five to six cents?

A. Sold a total of 1,445,945,000 feet.

Q. How much volume of gas at six to seven cents?

A. Two billion, fifty-one million, seventy-two thousand.

Mr. Pruet: That is at what price?

A. That is from six to seven cents average price.

Mr. Rolston:

Q. From seven to eight cents.

A. Seven to eight cents, three billion, six hundred and eighty-eight million, eight hundred and forty thousand cubic feet.

Q. Eight to nine cents.

A. No. gas.

Q. From nine to ten cents, how much volume?

A. Ten billion, six hundred seventy-five million, nine [fol. 786] hundred fifty-six thousand feet.

Q. Now, how much percentage does that make Mr. Rowland?

A. Percentage of the total volume sold under ten cents?

Q. Yes.

A. Thirty-three percent of our total 1945 volume was sold at less than ten cents.

Q. Direct industrial sales.

A. That's right. That is all I am reporting on here.

Q. From ten to 12 cents how much volume?

A. From ten to 12, or 10 to eleven?

Q. Ten to eleven, I mean.

A. Fifteen billion, 374 million, ninety thousand cubic feet.

Q. What percentage was that?

A. That, together with the remainder of the gas under ten cents amounts to sixty percent of our total 1945 direct industrial sales volume.

Q. From 11 to 12 cents, what is the volume?

A. Five billion, 332 million 399 thousand cubic feet.

Q. How much is the percentage in that case?

A. That, together with the other gas under 12 cents brings it to seventy percent of our total industrial sales directly served customers.

Q. Now what percentage of the gas that is sold directly for industrial purposes is sold under twelve cents?

A. Seventy percent of our 1945 volume.

Q. How much volume is that?

[fol. 787] A. Total volume is fifty-six billion, 457 million, 947 thousand cubic feet.

Q. What do you mean by that, can you be a little more specific?

A. Well, our total 1945 direct sales was that figure, 56 billion in round numbers, in analyzing out the average price we got for the gas we find 70 percent of that volume was sold at an average price of less than 12 cents a thousand.

Q. Now, if the price of gas, if we had to pay ten cents for it at the well head, buy it from the Guymon-Hugoton field, what effect, if you know, would that have on these industrial sales contracts.

A. Well, we would be buying it for more than we sold it for on about sixty percent of our business or about 33 per cent of our business.

Mr. Pruet: You mean not your business, your direct industrial sales.

A. That's right, that's what I am talking about in this case.

Mr. Rolston:

Q. What would be the effect on your ability to negotiate contracts if the price of gas was ten cents.

A. It would be very much impaired considering the competition we have.

Q. Would you lose any sales?

A. I think we would, yes, sir.

Q. How much would you lose, if you know, have you a judgment?

A. We would probably not be able to sell about sixty percent of what we are selling now.

[fol. 788] Mr. Pruet: Let the record show again that is direct industrial sales.

A. Yes.

Commissioner Armstrong: Would they buy other competitive fuel cheaper or would they buy other gas?

A. Probably be split by other gas companies in some respects, in certain areas and in other areas where the gas companies aren't operating I am sure they would take coal or oil.

Mr. Rolston:

Q. What effect would this price of ten cents have on the takes of gas in the Guymon-Hugoton pool?

A. Of our takes of gas?

Q. On the volume of gas, the takes, do you know?

A. I couldn't answer that.

Q. If you lost these sales.

A. If we lost these sales we wouldn't have to buy as much gas. That would reflect on our purchase of gas in the Hugoton field.

Q. If you paid ten cents for gas in the Guymon-Hugoton field could you sell that gas for ten cents or twelve cents at Kansas City and stay in business?

A. Well, I have my doubts whether we could.

Mr. Pruet: We object to that question, it isn't based on anything in evidence. I don't think there is any direct industrial sales made in Kansas City.

Mr. Rolston:

Q. Well, is there?

A. In the city limits of Kansas City, no, sir.

[fol. 789] Q. Near by.

A. Yes, there is some near by.

Q. Now, as I understand you, you also negotiate contracts, assist in negotiating contracts for indirect sales.

A. That's right.

Q. What do you mean by that?

A. Well, we have a number of distribution systems connected to our system many of which are rather small and not able to maintain a staff or industrial or commercial men and as a result they call upon me, that is, the distribution company calls on me and I go out and help them negotiate their sales.

Q. Are those sales regulated by any agency, those indirect sales?

A. Indirect sales are regulated, yes, sir.

Q. Do you have any figures on the volume of those sales? That is the gas that we sell for resale for industrial use.

A. Yes, I have our 1945 sales volume.

Q. How much volume of gas did we sell for indirect sales between four and five cents.

A. For indirect purposes?

Q. Yes.

A. None.

Q. What is the lowest figure?

A. I think the lowest figure is six cents. I haven't attempted to make a tabulation similar to the one I made on direct sales.

Q. How much gas then is sold on indirect sales at six cents, how much volume?

[fol. 790] A. I don't have those figures broken down. I just have the total volume for 1945.

Q. How much of the total volume?

A. Total volume is about 53 billion feet, in round numbers.

Q. At what price?

A. As I recall, we averaged a price of about ten and a half cents for that gas in 1945.

Q. What percentage of that—do you have the percentage?

A. You mean the percent of our total industrial sales,—about forty-seven percent as I recall. 53 billion in one case and 56 in another.

Q. Now the Federal Power Commission has ordered a reduction, ordered a cut, that is correct, isn't it?

A. I understand yes, that they have.

Q. On the rates that are under their jurisdiction.

A. Yes, sir.

Q. Now, have you made any estimate or can you make an estimate on what the price for these indirect sales would be, the average price, with this cut in mind?

A. We have no assurance or no knowledge of what the Federal Power Commission will or would approve in the event the rate order was made final. We have no definite way of knowing what would be accepted but we have made some estimates as to the probable effect of such reduction.

Q. Can you give us those estimates?

A. Yes. We think the probable effect of such reduction [fol. 791] would bring our average price for resale industrial gas to about 9.6, 9.6 per MCC.F.

Mr. Green: That is indirect industrial?

A. That is indirect industrial.

Mr. Rolston:

Q. Well, if we had to pay ten cents for gas, what effect would that have on it?

A. Well, it would certainly impair our ability to sell gas. We couldn't sell it for 9.6 and pay ten cents for it—I don't think.

Q. What is the total volume of the direct industrial and the indirect industrial?

A. Approximately 101 billion feet in 1945.

Q. What percentage of our business is that, in volume?

A. That volume?

Q. Yes.

A. It would be in the ratio of 110 over 146 our total sales as I recall, in round numbers for domestic and industrial purposes, all purposes last year about 146 billion feet, so that the ratio there would be about 110 over 146 which would be about 75 percent of our total sales volume.

Q. That's all.

Cross-examination.

By Mr. Pruet:

Q. The Federal Power Commission made a determination you had excess profits of four million four hundred thousand dollars in 1941.

A. I think that was the year.

Q. That was on your sales, indirect sales wasn't it?

[fol. 792] A. Yes, sir.

Q. How much would that be per thousand cubic feet of gas involved in your indirect sales?

A. You mean indirect sales in 1941 or '45?

Q. Well, as I understood it, the Federal Power Commission hearing involved the year 1941, is that right or am I wrong on that.

A. Yes, sir.

Q. Now the Federal Power Commission made and determined, so Judge Cullison has agreed, that during that year you made an excess profit, over and above what was a reasonable profit to the extent of four million, four hundred thousand dollars and that was on your indirect sales, wasn't it?

A. Yes, sir.

Q. They sold to the distributor for redistribution to the public.

A. Right.

Q. Do you know how many thousand cubic feet you had involved that year in that kind of sales?

A. No, I don't recall that.

Q. Could you ascertain that and find out how much thousand cubic feet was involved in indirect sales in four million, four hundred thousand dollars, would be?

A. I think that could be done.

Q. I wish you would do that.

A. *Alright.* I don't have the 1941 volume figures with me.

[fol. 793] Q. Now, on your indirect sales, if this Commission, as far as they are concerned, should fix the price at the wellhead at ten cents a thousand cubic feet and the Federal Power Commission recognizes that figure, you would still be permitted to make your 6½ per cent profit on your investment, wouldn't you?

A. Well, I am not sufficiently familiar with——

Q. Well, I say, if they do that.

A. Well, I presume, if they did, yes.

Q. That wouldn't affect your net profit a bit, would it?

A. (No answer.)

Judge Cullison: And if the Customers would pay it,—I'm objecting to the question as too vague.

Mr. Pruet: Well, what I wanted to know when I asked that question was how much this $4,400,000.00 amounted to.

Judge Cullison: We object to his 10¢ basis.

Q. If this Commission should fix a price of 10¢ per thousand cubic feet at the wellhead in the Guymon-Hugoton

Field and that figure was recognized by the Federal Power Commission, insofar as your indirect sales are concerned that wouldn't affect you, at all, would it?

Judge Cullison: We object to that as a hypothetical question without sufficient facts to enable the witness to give an intelligent answer.

Q. You do know that the ruling of the Federal Power [fol. 794] Commission is going to result in a reduction of rates and a refund to the consumer in Kansas City for the year 1941, to the extent of $4,400,000.00, don't you?

Judge Cullison: In Kansas City?

Q. Well, your ultimate consumers, wherever they are.

Chairman Bond: The Federal Power Commission found you had excess earnings of $4,400.00-.00,—if you had been paying a higher price at the wellhead the royalty owners would have gotten that money to that extent and the people who owned the gas and the people of Oklahoma would have gotten that money, wouldn't they?

Mr. Pruet: And we are talking of indirect sales.

Judge Cullison: I'll withdraw my objection.

A. Well, I presume if that order is made by the Federal Power Commission, but who it will be paid to I don't know,—whether in Kansas City, or where.

By Commissioner Armstrong:

Q. It looks to me like if the Federal Power Commission had jurisdiction of this, of these indirect sales you would have been able to show a lot of loss there, wouldn't you, and wouldn't have had to take such a big cut,—if the Federal Power Commission had had jurisdiction couldn't you have shown a lot of loss in that part of your business?

Judge Cullison: That doubtful word, "if" belongs to the past.

[fol. 795] Mr. Pruet resumes examination:

Q. Who of the Companies do you sell for resale, and where are they located,—that is, your indirect sales,—to whom do you sell?

A. We sell to distributing companies in four states.

Q. Name them, please,—tell where they are located.

A. Well, it's a job to name them all. I can name you some large ones but if you will get the report of the——

Q. Well, name some of them.

Judge Cullison: Is it between three and four hundred?

A. No, I think it's between two and three hundred, Kansas City Gas Company,—Wyandotte Gas Company——

Q. Where is the first one located?

A. The Kansas City Gas Company is located in Kansas City, Missouri, and distributes gas in Kansas City, Missouri.

Q. Where is the Wyandotte Company?

A. The Wyandotte is in Kansas City, Kansas and distributes in Kansas City, Kansas.

Q. What other companies?

A. Other Companies are the Kansas Public Service Company, located at Lawrence, Kansas and distributing at Lawrence. The Kansas Electric and Power Company, distributing in Emporia and Leavenworth. The Interstate Company, the Central States Company, Bonner Springs, Kansas.

Q. They are all subsidiaries of Cities Service?

[fol. 796] A. (No answer.)

Q. Aren't they all affiliates of the Cities Service Gas Co.?

A. Yes.

Judge Cullison: What do you mean by "all"?

A. The Kansas City Gas Company——

Q. How many others of those distributing companies are affiliates of Cities Service Gas Company?

A. Well, I don't——

Q. Now the Federal Power Commission regulates and fixes your rates and schedules,—when the Federal Power Commission finds excess profits in the amount of $4,400,000.00 that you made, that will go to your affiliates, wouldn't it?

A. Some of it.

Q. And to all intents and purposes, if you don't make it your affiliate companies will make it?

A. It depends on what they are going to do with it,—I think some of them have gone on record or have put it

into the newspapers that they will use it for the benefit of the public entirely.

Examination.

By Mr. McBee:

Q. Can you recall and tell us what the burner price is for the Kansas City Gas Company, for domestic gas?

Judge Cullison: We object, as immaterial,—it isn't cross examination and it isn't part of the issues, so far, in the case.

[fol. 797] Commissioner Weems: Do you know, Mr. Witness?

A. Well, I don't think I could give you a very accurate answer, but I might approximate it.

Commissioner Weems: Objection overruled,—exceptions allowed.

A. As I recall, there are two schedules, maybe more. I'm just giving you my guess on it,—there is one rate in Kansas City for gas for the first three thousand feet—over 3000 feet——

Q. What price is charged for under 3000 feet?

Judge Cullison: The same objection.

Vice-Chairman Weems: Overruled.

Judge Cullison: Give us an exception.

Vice-Chairman Weems: Exception allowed.

A. I think it is in the neighborhood of about $4.00 for the first 3000 feet.

Q. Which would be about $1.33?

Judge Cullison: May it be understood that we have an objection to each of this line of questions and an exception to each adverse ruling?

Vice-Chairman Weems: Yes.

Q. How much is the burner top price that you get for the gas that you transfer from the Guymon-Hugoton Field to the customers of the Wyandotte Company?

A. I think the Kansas City Gas Company and the Wyandotte schedules are the same,—I'm not sure.

[fol. 798] Q. As long as you have been with those companies you have had your——

A. You're talking about domesti gas,—my job for the last sixteen years has been promoting the sale of industrial gas, and I don't know much about the domestic use.

Q. What is the minimum price that has been charged by any of the distributing companies to their customers,—the burner tip price?

A. I don't know that.

Redirect examination.

By Mr. Rolston:

Q. Now, as I understand your testimony in chief, you negotiate and promote industrial sales of gas for Cities Service Gas Company?

A. Yes,—certain industrial sales.

Q. When you are requested to do so you assist in the sales of industrial gas?

A. That's right.

Q. Do you have anything, at all, to do with domestic sales?

A. The only thing I have had to do with domestic sales is in the way of consulting the distributing companies about what their peak will be during the winter and passing the information I get on to the engineer,—that's all I have been interested in, so far as domestic gas is concerned.

Q. And that doesn't involve prices?

A. No.

[fol. 799] Q. And the prices you have named are before the cut, before the application of the cut as ordered?

A. What prices do you mean?

Q. The domestic——

A. Oh, yes those are prices that have been,—I don't have any idea of what they will be.

Examination.

By Floyd Green:

Q. You testified that direct pipeline sales were approximately seventy-five per cent of your total business, did I understand you to so testify?

A. No, seventy five per cent of our total volume.

Q. That includes your direct sales and your industrial sales——

A. That's all industrial sales, both direct and indirect.

Q. Hasn't that increased since 1941, the year that went before the Federal Power Commission?

A. Well, I don't know, but for a number of years it has run about that percent.

Q. It is about the same as it was in 1941?

A. Yes, that's my memory.

Q. Wasn't it about 61% in 1941 as against 75%?

A. Well, for several years, my memory is it has been 70 to 75%.

Q. What has been the tendency of the prices charged industry,—up or down?

A. They haven't changed much.

Q. You started to testify about your indirect sales.

[fol. 800] A. Yes,—in 1945 it was an average of 11.38 cents.

Q. Do you know what it was four years ago?

A. No, sir.

Q. Three years ago?

A. No.

Q. Don't know whether it was up or down?

A. It seems to me they varied, but I couldn't say for sure.

Q. You testified you had prepared an estimate of—have you also prepared an estimate of the effect of that order on the volume of sales to distributing companies, for domestic consumption?

A. No, I have not,—that doesn't come within my duties.

Q. You have only prepared that as to where the Company serves industrial consumers?

A. Probably I should qualify that,—these estimates haven't been prepared by me, but by the Department that does that work.

Q. I believe you testified that the estimates you have show a reduction in that class of service from 10½ to 9.6 under this order?

A. Yes, sir.

Q. And the same department that made that estimate would furnish you no estimate as to the price to be charged companies for domestic consumption?

A. I don't know,—all I am interested in is industrial.

Recross-examination.

Q. As I understand it, you handle your Company's direct [fol. 801] industrial sales and also their indirect industrial sales,—is that correct?

A. No, it is not correct.

Q. Well, what do you handle?

A. I handle certain negotiations for certain negotiations of main line industrial sales,—while other sales are handles by Mr. Stuntz,—all main line industrial sales are handled by me

Q. What do you mean by "indirect sales",—that's where the Cities Service Gas Company sells gas to a distributor for resale to the ultimate consumer?

A. Yes, sir.

Q. Don't you handle the sale of that gas to the distributor for resale to the industrial consumer,—don't you handle those sales?

A. What do you mean "handle"?

Q. Well, do you "handle" them or "negotiate" them?

A. I think I might make a qualification there,—I said I will say I assist in the negotiations if they request me to do so.

Q. Do you know what their sales are?

A. Yes, I know,—three billion feet last year.

Q. What did you sell it for to them?

A. We sold it for 10½ cents per thousand cubic feet.

Q. What did they sell it for?

A. I can't answer that,—different rates.

Q. Can you give me one price they sold it for? Can you [fol. 802] give me one isolated price that a distributor made a sale of industrial gas for?

A. Yes, sir.

Q. What?

A. Six cents.

Q. You can't remember another?

A. I don't remember another.

Q. Well, what was the highest?

A. Well, I don't remember.

Q. With that number of distribution companies and that number of prices, different prices, you can't remember the lowest one?

A. Yes, I can remember that very well.

Mr. McBee: I want that brought out,—I want to show that to the Commission. The difference between burner-tip prices,—that should be brought out.

Judge Cullison: For what purpose?

Mr. McBee: So the Commission will be informed with reference to it.

Judge Cullison: I don't know why they'd be curious about it.

Examination.

By Mr. Floyd Green:

Q. Do you have jurisdiction to fix the price of the gas that you sell to your direct consumers from the pipeline,—or are you told what to charge?

A. No, my procedure is to investigate, survey, and sell, [fol. 803] and make recommendation to the management what we can get for it.

Q. That's all you do,—make recommendation what you can get?

A. That's right.

By Mr. Pruet:

Q. What you can get for it depends upon what the other fellow can sell it for, doesn't it, when you are competing with another distributor?

A. Yes.

Judge Cullison: We object,—too vague.

Q. When do you negotiate? Maybe I don't understand what you do,—do you negotiate with reference to the direct sales you make to the distributor?

A. No.

Q. Who does that?

A. Oh, it has been more or less our practice to file our rates with the Power Commission, the terms and conditions are all set forth and the sales are made after that.

Q. Who handles the sales you make indirect to the distributor?

A. Mr. Franks and I.

[fol. 804] Q. You are interested principally in Natural Gas?

A. Yes.

Q. You are interested in some of the contracts?

A. I distribute some of them after they are more or less determined.

Q. Then of course, part of that gas is going to be sold to the Industrial Consumer?

A. Yes.

Q. Now handling that phase of that work, don't you think that it would be of value to know what the distributors would get for Industrial Production?

A. Yes, sir.

Q. Do you know it?

A. I can't give you a specific figure and there is 130 to 150 rates.

Q. You only remember the lowest one?

A. Yes, that is awfully easy to remember.

Q. Particularly when we are trying to raise the price?

A. (no answer).

Witness Excused.

[fol. 805] Whereupon JOE RALSTON, JR., of lawful age, being first duly sworn, testified as follows, to-wit:

Witness examined by Mr. Cullison:

Q. State your name to the Commission.

A. Joe Ralston, Jr.

Q. You are an attorney in this case?

A. That is correct.

Q. Is there any other way of proving the matter we now desire to submit other than through yourself?

A. I don't know of any other way.

Q. I will ask you whether or not in the past and after we tender, the purported tender of gas by Peerless, you telegraphed the O.P.A. for an Administrative interpretation of that order pertaining to the Hugoton-Guymon Field?

A. I did.

Q. I will show you a paper marked Exhibit 76, state what that is?

A. It-s the Night Letter that I sent to the Petroleum Branch of the O.P.A. in Washington, D. C., the date is April 30, 1946.

Q. I will show you papers marked Exhibit 77, 78 and 79 and ask you to state what these are?

A. Telegram that I received in response to the telegram marked Exhibit 76 from Mr. P. A. McCanta from the Petroleum Branch of the O.P.A.

[fol. 806] Mr. Cullison: We now offer Exhibits 76, 77, 78 and 79 in evidence.

Earl Pruet: We object to that because the Oil and Gas is no longer under the O.P.A.

Chairman Bond: Will you please read them to the Commission, Judge Cullison?

(Whereupon Mr. Cullison read Exhibits 76, 77, 78, and 79, to the Commission.)

Commissioner Armstrong: The O.P.A. doesn't have anything to do with it now.

Earl Pruet: The Oil and Gas is out from under it now.

Mr. Cullison: The tender was an attempt to get us to violate the law at that time.

Earl Pruet: (to witness) Do you know who Mr. McCanta is?

A. He is in charge of the Petroleum Division in the O.P.A. or was at the time I sent this telegram.

Q. You haven't seen the O.P.A. down here for this hearing?

A. No.

Q. You don't know whether the O.P.A. covers oil and gas any more do you?

A. I don't believe it does.

Mr. Cullison: We offer again, Exhibits 76 to 79 inclusive.

Earl Pruet: We object to them for the reason that the O.P.A. has no authority over oil and gas at this time. [fol. 807] We object to the telegram for the further reason that there is nothing to show this man-s authority.

Chairman Bond: The Commission will receive them for what they are worth.

Joe Ralston: We want to offer in evidence, as Exhibit 80, Maximum Price Regulation 436, and call to your attention the Congressional Act, 44 U.S.C.A. 307 which requires all regulations published in the Federal register is to be judicially noticed by every court and agency, and in connection with this offer we want to call the Court-s attention which was filed and in full force and effect at the time that this tender was made, and that there was a violation made

on the part of the Peerless Oil and Gas Company under G.P.A. regulations.

Earl Pruet: We object to this regulation because they are not properly identified and no longer in effect.

Chairman Bond: Received for what they are worth. The Commission will adjourn until ten o'clock in the morning.

Adjournment.

[fol. 808] GEORGE ROWLAND, being recalled, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Rolston:

Q. You are the same George Rowland who was on the stand yesterday.

A. Yes, sir.

Q. I want to clear up a matter or two. Mr. Rowland, in your testimony yesterday as to direct industrial sales. As I recall you testified that there is a certain amount of gas sold at twelve cents and less. How much was that?

A. The volume sold at less than 12 cents was approximately 70 percent of our total.

Q. I mean volume, not the percentage.

A. The volume sold at less than 12 cents in the year 1945, directly from our main line was 35 billion 209 million, 143 thousand cubic feet.

Q. How much percentage of the industrial sales is that?

A. That is Seventy percent of the direct industrial sales.

Q. Now, if the Commission should fix a price of gas at ten cents or we were required to pay ten cents for this gas which we sell now under 12, what effect would that have on these industrial sales direct industrial sales, can you explain that in detail?

A. Well, I think we would stand to lose about 70 percent of our direct industrial sales on the grounds that we could [fol. 809] not obtain that much increase from our industrial customers and also we would not be able to profitably serve it, to serve that market.

Q. Now, in making these industrial sales, that is a matter of contract, is it?

A. That's right.

Q. Do we have any authority or compulsion that we can make these industrial purchasers buy this gas?

A. No, sir.

Q. It is solely a matter of voluntary contract.

A. That's right.

Q. They can buy if they cho-se or not buy.

A. That's correct.

Q. Now, in negotiating these contracts, is that a matter of competing with somebody else?

A. It is a matter of competing with other fuels and other gas, taking into consideration all factors.

Q. When you say 'all factors' just exactly what do you mean, what factors?

A. Oh, there are many factors involved in the sale of industrial gas other than competition with other gas and other fuels. For example, we have to consider the fact that all these contracts we have, industrial contracts are on an interruptible basis. We have to consider in our negotiations how long these plants will be interrupted,—during the emergency period for example, the cost of carrying stand-by fuels for example, is an item that has got to be con- [fol. 810] sidered. It is usually a substantial item,—where the plants do not carry stand-by fuels and our subject is shut down the cost of the shut down is quite an item. That is one of the principal things we have to consider in our negotiations over and above the other fuel.

Q. From what you say, do you mean if the price of gas was increased it might be more profitable to the purchaser to use other fuel?

A. In some respects, yes,—in many respects.

Q. Can you give any illustration of any of these sales that you make or lose, can you give any illustration if the price was increased, any specific illustration that you know of, from the contracts you negotiate, as to what the consumer did, that is the purchaser, what effect that would have on his business?

A. I think I can give you a fairly recent illustration of that. The Spencer Chemical Company who has a large am-onia nitrate plant at Pittsburg or near Pittsburg, Kansas, recently *acquired* the Jayhawk Ordnance facilities from the Army and at that time we had to negotiate a new contract. This particular plant was competing with other plants, one in Arkansas as I recall, and we were under considerable pressure at that time in the negotiations because we were informed by the officials of the Spencer Chemical

Company this other plant was buying gas considerably cheaper than the price we were offering and in as much as they were a competing plant, that is buying gas consider-
[fol. 811] ably less I had my doubts whether they would be able to continue if we had to take—demand a corresponding increase in our gas price. That was one fairly recent example.

[fol. 812] Q. Now, Mr. Roland, in your efforts negotiating and consummating these direct industrial sales, you tried to get the best price you could under the circumstances?

A. I tried to get all I reasonably could, all factors considered, yes.

Q. And the prices they sold this gas for was the result of your efforts, was it?

A. Yes, sir.

Q. Now, to be a little more explicit as the effect of an increase in prices, do you mean by your testimony to say that some of those customers might be put out because they couldn't compete with other plants of like nature?

A. I think there is such a possibility in some respects, yes.

Cross examination.

By Mr. Pruet:

Q. What did you say constituted seventy percent of your volume?

A. That's the volume of gas that we sold for direct sales during 1945, at a price which averaged less than twelve cents per thousand cubic feet.

Q. You mean there is or was seventy percent of your volume of sales averaged less than twelve cents?

A. Yes, sir.

Q. And not 70% of your volume?

A. That's right.

Q. Now the remaining 30%,—for what did you sell that?

A. I didn't say the average price for that thirty percent.

[fol. 813] Q. Could you gove that?

A. I think that could be determined.

Q. You ought to be able to determine what you sold the thirty percent for,—it ought to be as easy for you to determine for what price you made your direct sales of natural gas at twelve cents and above as it was for you to determine

what price you made your direct sales for under twelve cents, had it not?

A. Yes, sir.

Q. I wish you would determine that and submit it to the commission, cent by cent, and volume by volume,—what I mean by that, check it five to six cents, six to seven, seven to eight, ten to 11, etc.—what you sold for twelve cents, what you sold for twelve to thirteen, and so on,—will you do that, please, sir?

A. Yes, sir.

Q. Now, you said yesterday you would furnish us how much per cubic foot $4,400,000.00 would be on your direct sales for 1941,—do you have that?

A. Yes, I have that.

Judge Cullison: Now, that's for 1941. We were not operating in the Guymon-Hugoton Pool in 1941,—that would have no bearing upon the issues in this case.

Mr. McBee: I would like to know why the Respondent could use a great deal of this information for their own benefit and deny us the balance of it, whether it is based on [fol. 814] '41 or any other year.

A. That would figure $.070396.

Q. Seven and practically four-tenths cents per thousand cubic feet for that amount of your indirect sales for that year?

A. Yes, sir.

Q. Now, you said the Spencer Chemical Company was competing with somebody,—where is the Spencer Chemical Company located? Where did you sell gas to it?

A. At Pittsburg, Kansas.

Q. What is the other company with which Spencer Chemical Company was competing?

A. I don't know the name of that Company.

Q. Now, your industrial total direct sales of natural gas,—state what percent of your total volume of sales is natural gas.

A. Of all sales?

Q. Yes, sir.

A. It would be in the ratio of fifty-six billion to one hundred forty-six billion for 1945,—it would be in the ratio of 44% in volume.

By Mr. Mayfield:

Q. Thirty-eight percent, approximately, isn't it?

A. Well, that's a matter of computation. It would be 56 over 146.

Q. Now, of your income, what percentage of your total income does your income from direct sales constitute?

[fol. 815] A. Well,——

Judge Cullison: Objected to as improper cross examination.

Chairman Bond: Overruled,—Exceptions are allowed.

A. Now, are you talking about gross income,—gross revenue?

Q. Give it gross, then net.

A. I don't have the net.

Q. What was the gross?

A. As I recall, the gross was about $24,000,000.00, of all the sales.

Q. The total of the direct sales was about 6.4 million dollars, and that would be very little over 25% of your total gross income was in direct sales?

Judge Cullison: The same objection.

Chairman Bond: Overruled,—exceptions allowed.

A. Yes, sir.

Q. Now, you're speaking of 1945?

A. Yes.

Judge Cullison: May we have an objection to each and every question on this line without objecting every time?

Chairman Bond: Yes, to each and every question, the objection is overruled and exception allowed.

Q. Now, you have testified that the distance from market determines the amount or the price that is received for [fol. 816] natural gas at the wellhead, did you not?

A. No, sir.

Q. I thought you testified to that.

A. No, you are confused about that,—I think other witnesses testified to something like that.

Q. Well, I just beg your pardon,—I thought you did,—I'll ask you this question,—isn't it a fact that the Spencer Chemical Company,—well, at what price did you sell your gas to them?

A. During what period?

Q. '45?

A. I think it was slightly over ten cents, average.

Q. I will ask you if it isn't a fact that officials of that Company have told that they could operate at a profit and pay sixteen cents per thousand cubic feet for gas?

A. They never told it to me.

Q. Do you think they could operate at a profit and pay sixteen cents per thousand cubic feet for gas?

A. (No answer.)

Q. Isn't it a fact that the Spencer Chemical Company could operate at a profit and pay sixteen cents per thousand cubic feet for the natural gas which they used?

A. I don't know.

Examination.

By Mr. Floyd Green:

Q. This seventy per cent of the direct industrial sales that you say you sold for less than twelve cents,—those [fol. 817] contracts are all made in competition with other gas, are they not?

A. No, we have gas and other fuels——

Q. What other fuel do you have that would compete with gas at ten cents per thousand cubic feet, anywhere on your system?

A. Principally we are competing with gas.

Q. It would have to be gas, would it not?

A. Let me see,—no, we're competing with coal——

Q. Does coal furnish competition where you quote prices less than ten cents?

A. No,—in practically all cases we're up against other gas.

Q. In practically all cases you are up against other gas?

A. Yes, where we sell for less than ten cents.

Q. Isn't it a fact that throughout your entire system you have the only system that could adequately furnish those customers?

A. No.

Q. Are there other lines that could furnish them, if you did not?

A. In most cases,—yes.

Q. In most cases?

A. Yes,—you said for less than ten cents?

Mr. Green: Yes,—that's all.

Q. Don't you furnish the Electric Power Company at Baxter Springs, Kansas, and Rush, Kansas?

A. Yes.

Q. What is that?

[fol. 818] A. Empire Electric Company.

Q. At what price is that gas sold?

A. Average price about 10.3 cents.

Q. At what price do you sell gas in Kansas City, to Kansas City Light & Power Company?

A. We don't make that sale,—that's made by the distributing company.

Q. Do you know what that price is?

A. No, I don't.

Q. The price they receive is reflected in the price they pay, is it not?

A. Yes, sir.

Q. At what price do you sell the gas which is furnished to the Kansas City Light and Power Company?

A. We sell it at our standard schedules.

Q. What is that schedule?

A. Oh, it covers quite a range, Mr. Green, of prices. I can't give you a specific price.

Q. Well, is Kansas City Light & Power Company an affiliate of Cities Service Company?

A. No.

Q. Is the gas sold to that Kansas City Light & Power Company at seven cents a thousand cubic feet by the Gas Company?

A. I don't think so,—no.

[fol. 819] Redirect examination.

By Mr. Rolston:

Q. Now, Mr. Roland, Mr. Pruet asked you to furnish a cent by cent statement of all sales over 12¢,—12¢ and over,—how long would it take you to do that?

A. Well, I rather imagine it would take two days or a day and a half to get that accurately.

Q. Could you get it any quicker if you get it on a basis of five cents, or one cent?

A. I think so.

Mr. Rolston (Addressing Mr. Pruet): Does it make any difference to you whether it's one cent or five cents?

Mr. Pruet: Well, I don't know.

Mr. Rolston: Well, I'm asking you what you want.

Mr. Pruet: I think I want it cent by cent.

Judge Cullison: Our objection goes to everything other than industrial gas,—I assume that objection should be general.

Chairman Bond: Let it be general,—let the record show it is overruled and exceptions are allowed.

Q. Now, Mr. Roland, Mr. Green asked you about this Spencer Chemical Company, at Pittsburg?

A. Yes.

Q. That's in a coal area?

A. Yes.

[fol. 820] Q. Is coal cheap there, or do you know?

A. Well, I don't understand what you mean by "cheap".

Q. Well, is it less than the price of you are selling there

A. Well, it—

Judge Cullison: If the Commission—

Mr. Pruet: We object to that question, because gas and coal are sold on different standards.

Q. Can you answer that question?

A. Is coal cheaper than gas in that area?

Q. Yes.

A. In some respects, yes,—in other respects, no.

Q. Now, we sell gas, do we, to the Spencer Chemical Company?

A. Yes.

Q. What do they do with that gas?

A. They use part of it for processing purposes and part for the boilers.

Q. Can they use coal for that, for those purposes?

A. I don't know,—so far they haven't been.

Q. By Mr. Floyd Green: If they used coal they would first have to convert it to gas?

A. That's right.

Q. And you sell the gas for what?

A. 10.3,—10.4.

Recross Examination.

By Mr. Pruet:

Q. What percent of the total gas used in the Spencer [fol. 821] Chemical plant is processed gas?

A. The total requirements of Spencer Chemical Company?

Q. Yes.

A. About fifty percent.

Examination.

By Mr. McBee.

Q. Mr. Roland, you testified a while ago about the possibility of this respondent having to close down if the prices were not maintained at the figures given in that report,—on what do you base that?

A. The situation in general, one, that they would probably be unable to compete with other plants using gas.

Q. Let me ask you,—do you know of any other commodities that sell at the same price now that it was six months, or twelve months ago?

A. Yes, I do.

Q. What?

A. Electricity is an example.

Q. What about groceries?

A. Groceries?

Judge Cullison: Isn't that,—we object to that as incompetent, irrelevant and immaterial and injecting a collateral matter.

Q. Can you make any comparison of the prices of coal, lumber, groceries, any of the ordinary commodities, at the present time and the prices of the same commodities one year ago?

[fol. 822] A. I don't understand what kind of comparison you want.

Q. By percentage.

A. Well, I can't give you any percentages on it, because there are too many fields to cover.

Q. Well, are those prices higher or lower?

Judge Cullison: I object to that, the OPA records would be the best evidence.

[fol. 823] Q. The price of gas is not a preferred commodity on the market we have the right to get the compared prices as the respondent has to beat it down.

Mr. Cullison: We object on the further ground that it does not tend to prove or disapprove any issues on the case, he is getting a profitable profit.

Q. You know one thing, Mr. Witness, there has ben a vast increase in the general prices in the things that a human being buys, don't you or do you?

Mr. Ralston: We object to that form of a question.

A. I don't agree that there has been a general increase in the cost of everything.

Q. Has there been an increase in the cost of more than half of everything?

Mr. Ralston: We object to that.

Q. That's all.

Witness excused.

[fol. 824] Whereupon Mr. JOHN GERE was recalled to the stand:

Witness examined.

By Joe Ralston:

Q. You are the same John Gere that was on the stand?

A. Yes.

Q. You heard Mr. Rowlands testimony concerning the percent and volume of gas that is sold for direct industrial use, as under twelve cents?

A. That is correct.

Q. What is the amount of the volume?

A. The amount is some thirty-five or thirty-nine billion feet per year, for the year 1945.

Q. How much gas—average a day—is taken through the Hugoton gas lines?

A. Approx-mately 190 million per day throughout the year.

Q. What part is purchase gas and what is produced?

A. Approximately fifty-percent purchased and fifty percent produced.

Q. What percent on the take through the line, what would be the effect on the Hugoton line and the take from the field from Cities Service Gas Company, if we lost 70% of its industrial direct sale?

Mr. Pruet: We object to that unless its made for a question to be his opinion.

Q. I am asking his opinion.

[fol. 825] Chairman Bond: He may give his opinion.

A. There is 39 million feet—108 million feet per day if these sales were lost commercially, we would have to cut back that much on production an equivalent amount which is the Texas County take, and the difference between that would decrease it 108 million or 80 million per day.

Q. Would it be any better on the business of Cities Service Gas Company if the price of gas was increased two cents, that is from four cents to six cents?

A. It would increase purchases—700,000 in 1945.

Q. What would ten cents do?

A. Increase it about two million one hundred thousand a year.

Earl Pruet examines the Witness:

Q. You don't sell all of your sales from the direct sale from the Guymon pool?

A. Its comingled.

Q. The natural gas is comingled and they can't tell how much of the Hugoton field goes where and you testify that you will loose seventy percent of your direct sales or seventy percent of fifty percent?

A. Its equal to thirty-nine million.

Q. You are leaving the impression that the company will reduce the take of the Hugoton field in the extend of that. if they fix the price at ten cents a thousand cubic feet?

[fol. 826] Mr. Cullison: That is not a threat to anyone.

Q. I will ask the witness if he didn't state that they could reduce?

A. I said that yes sir that would be very easily *do* do.

Q. And of course you are not going to do that?

A. I imagine if the price of gas is ten cents we would.

Q. At the present time—part of the industrial sales is from other sources?

A. That is right.

Q. Then if we charge the price of ten cents in the Hugoton Field—you will quit selling gas from that field and cut down the sales from the Hugoton field about seventy per-cent?

A. I believe that is what will happen.

Q. I believe you take about 190 million feet per day?

A. Yes.

Q. Fifty percent purchased and fifty percent produced?

A. Yes.

Q. And your direct industrial sales if it continues constitutes what percent of the total sales of natural gas?

Mr. Cullison. We object to that as immaterial and a collateral issue.

Chairman Bond: Overruled, exceptions allowed.

A. 39%.

Q. 39%? That is the total industrial sales?

A. Now wait a minute you said total sales.

[fol. 827] Q. That is the percent or relationship or the total direct sales to the total sales as to volume?

A. Yes.

Q. And you are only going to loose 70% of the direct industrial sales because you will only loose what you sell for less than 12 cents?

A. Yes.

Q. Then you take 70% of 39 billion?

A. Oh no.

Q. That is what you said.

A. Oh no, the question is that we would loose that 39 billion which is 12 cents or remains, that is what I predicated my answer on.

Q. What percent of your total sales is your total and direct industrial sales?

Mr. Cullison: We wish to object to that because it is not proper cross examination and not tending to prove any issues in the case.

Chairman Bond: Overruled.

Mr. Cullison: That is calling for conclusion of something that is not in this case.

Mr Pruet: It covers the entire proposition of the question that we want to bring out, that is the direct relationship of the sales to the total direct sales and what they are going to loose.

[fol. 828] Mr. Cullison: You are sticking to direct sales?

Q. What percent of your total sales made by the Cities Service Gas Company is the direct sales?

Mr. Cullison: To which we object as injecting a collateral issue, that is not proper for cross examination.

Chairman Bond: Overruled.

A. 56 billion and some million, I don't recall the first figures—the total sales are 146 billion.

Q. What is the percent there?

A. 38½%.

Q. 38½%?

A. Yes.

Q. Now then you seem—as I understand it that your company is only going to loose 70% of that 38%, is that right?

A. That is right.

Q. Then instead of 38% that you claim that you will loose you will only loose 70% of 38% which will be about 26½%?

A. That is approximately right yes sir, one-fourth of the total of the sale is 39 billion.

Q. Then you claim that you will loose 39 million?

A. 39 billion.

Q. What would 190 million per day be in a year?

A. 71½ billion.

Q. Then you charge that will be los—and that is in the Hugoton Field?

[fol. 829] A. I would say that we would if the price is raised to ten cents, or near that point.

Commissioner Armstrong: Don't your company own most of the wells that you are taking gas from in the Hugoton Field?

A. We own 123 wells and are connected to some 100 other wells at the present time.

Commissioner Armstrong: What wells you would shut down are the other wells?

A. Fifty-fifty.

Floyd Green examines the Witness:

Q. A raise in price in gas in the Hugoton Field would not effect half of the gas that you take out there now except on the royalty where you own your own leases, that would only increase the amount that you pay your royalty owners?

Mr. Cullison: We object to that because it doesn't have anything to do with any of the issues in this case.

Commissioner Armstrong: You are going to make more profit because they are your own wells, you are not going to disconnect your own wells.

A. Federal Power Commission doesn't allow us any increase on our own wells.

Earl Pruet: Do you know what the burner tip prices are of the industrial gas that you sell?

A. No sir.

[fol. 830] Earl Pruet: Who would know that?

Joe Ralston: We object to that because we don't sell gas at the burner tip.

Chairman Bond: If they don't sell it you can't prove that question, but them.

A. We sell main line and domestic gas—I think it is forty cents where its right of way is given in the connection.

Joe Ralston: Examines the Witness:

Q. How much of our business is that?

A. This mail line gas?

Q. That you last mentioned?

A. One million to three million per day depending on the time of the year.

Q. What percent of the business?

A. About one-fourth percent.

Earl Pruet examines the Witness:

Q. You are familiar with the set up in the Hugoton Field?

A. What do you mean, "set up"?

Q. Pipe lines and compressor stations?

A. Yes sir.

Q. I will ask you if all of the industrail gas taken out of the field there, if it isn't Cities Service Oil Companies processing plant in that field?

Mr. Cullison: We object to that because it is attacking the collateral and not tending to prove anything.

[fol. 831] Mr. McBee examines the Witness:

Q. That goes into the value of the gas.

Earl Pruet continues with the Witness:

Q. The Cities Service Oil Company have a processing plant in the Huguoton-Guymon Field?

A. They do.

Q. And what do they do in that processing plant, if you know?

A. They remove the higher hydrocarbon, to facilitate transmission in the line between the station and Blackwell.

Q. What are they?

A. Hexane and heavier liquids.

Q. Do they remove natural gasoline?

A. I guess they get some small substances like Hexane and Butane.

Q. Propane?

A. No.

Q. Hexane and Butane?

A. Yes.

Q. I will ask you if all the gas taken out there isn't run through the Cities Service Plant and processed in that plant?

A. In the past operation they haven't run it all through because they havn't been able to handle it.

Q. They run the greater majority of it at all times?

A. That is correct.

[fol. 832] Q. This Riverton plant that you sell natural gas too, I will ask you if at the time the contract was made that the company was an affiliate of the Cities Service Gas Company?

A. I don't know.

Joe Ralston examines the witness:

Q. Is there any interruption in the flow of that gas at any time from the time that it comes out of the pool into the gathering line and on into our line?

A. No, sir, the gas is taken continuously and it is necessary to regulate the gas and increase the compressor as it continues.

Q. What is the object of that plant?

A. To strip the gas of just the heavy hydro carbons that are, under high temperatures and high pressures in the pipe line, and it decreases capacity in the line from 12 to 15% and it is approximately 30 million feet a day, obviously in cold weather flow would not have that much gas you are operating inefficiently.

Q. Is there any other object when to facilitate the flow of that gas?

A. No.

Mr. McBee examines the witness:

Q. Do you know the amounts of liquid hydrocarbon taken out of the gas?

Mr. Cullison: We object to that question.

Chairman Bond: Overruled and exceptions allowed.

[fol. 833] A. Running in the summertime, around 6 to 8000 gallons a day and winter time its about 12,000 a day.

Q. When was that?

A. I couldn't tell you.

Q. It's a valuable substance and salable?

A. Salable substance I understand, it's also my understanding that for the plant required to do it, the investment required in view, of the small amount it is a non-profitable plant.

Q. Why do they do it?

A. To take care of the efficiency of the pipe line and a peak day 25 or 30 million feet is necessary.

Q. When they have finished the processing what is the BTU content?

A. 1030.

Witness excused.

[fol. 834] Mr. Ross Stuntz, being recalled, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Rolston:

Q. You are the same Ross Stuntz that testified and qualified before in this hearing?

A. Approximately, yes.

Q. Have you heard or read the evidence that the applicant has presented in this case?

A. A good deal of it, yes, sir.

Q. Do you recall certain facts that you have taken from that evidence?

A. Yes.

Q. You have taken from *from* the testimony.

A. Yes, I have.

Q. What are those facts?

A. The amount of gas reserve per acre and the costs that were testified to—I mean values of the gas/

Q. Can you list the things you have taken into consideration?

A. Yes.

Q. List them/

A. The yield per acre that Mr. Ellison testified to.

Q. Let me ask you a question, have you made a tabulation of it?

A. Yes.

Q. Do you have it?

[fol. 835] A. Yes, sir.

Q. Can you produce it?

A. I think so. (Witness produces paper.)

Q. Now, to refresh your recollection from that tabulation can you tell what facts were taken from the testimony of the applicant?

A. The amount of gas reserve per acre and the present value of the lease in section 8, 4-16, Conwell lease.

Q. What other factors?

A. That is all the factors—the cost of a well.

Q. You have that tabulation made.

A. Yes, I do.

Q. Have it marked as Respondent's exhibit 81. What facts and assumptions have you made in the preparation of this tabulation?

A. I have used a yield per acre of eleven million feet and used a twenty thousand dollars for the cost of a well which Mr. Ellison testified to and that was also his gas reserve figure and then I also used the value of the lease of fifty dollars an acre which is also a value that was put on by Mr. Ellison.

Mr. Pruet: I object to all this as incompetent, irrelevant and immaterial.

Commissioner Armstrong: Overruled and exception allowed.

Mr. Rolston:

Q. Proceed.

[fol. 836] A. Then I computed the value of the total reserve, seven billion, forty million cubic feet of gas at four cents, I find it to have a value of $281,600.00. Then I computed as expenses the following items,—royalty, one-eighth of all the gas at four cents. $35,200.00; then the value of the acreage at $32,000.00; cost of a well at $20,000.00; gross production tax at five percent or seven-eighths of four cents, $12,320.00, the other eighth of the royalty is paid by the company in behalf of the royalty owner and deducted from his gross royalty. Then I had an item of $7100.00 for well operation and re-acidization expense, assuming that the well was acidized when it was drilled. Total expenses are $107,420.00. Subtracting that from $281,600.00 leaves income of $174,180.00. After the lease has been paid for at $50.00 an acre and after the well has been paid for entirely and after these other expenditures have been paid also, that leaves a return in percent of investment on the total investment of $52,000.00 or 334.96 percent or an average net return per year of $5806.00.

Q. What is the average net return at six cents and ten cents?

A. 560.3 per cent.

Q. Percentage?

A. Yes, sir.

Q. Average return per year?

A. $9707.00.

Q. Ten cents?

A. The percent is 1010.19 and the annual return is $17,510.00.

[fol. 837] Q. Now these earnings, your estimate over what period of years.

A. Thirty years.

We now offer in evidence Respondent's Exhibit 81.

Mr. Pruet: We object, incompetent, irrelevant and immaterial.

Commissioner Armstrong: Overruled. Exception allowed. Received for what it's worth.

Whereupon the Exhibit so offered and received is made a part of this record.

Mr. Rolston:

Q. Is this tabulation correct, according to your computation?

A. Yes, sir.

Cross-examination.

By Mr. Pruet:

Q. You didn't take into consideration in that tabulation discount or interest factors at all, did you?

A. No, for the reason it will pay out so qu-ck with the accumulated underages on these wells that the interest is inconsequential.

Q. How quick are you going to take the gas underage you have accumulated, how quick do you expect to take that, I would like to know.

A. I think his property will be paid out in about *tow* years.

Q. You think all of those underages will be produced [fol. 838] inside of two years.

A. Oh, yes, I believe it will.

Q. How soon do you estimate you will take the underages from the Conwell well?

A. That's a little hard to answer Earl—Mr. Pruet I mean.

Q. That's all right, I like the other better— —

A. —for the reason that actual deliverability on this well has never been taken and sometimes in the past actual deliverabilities have been quite different from temporary deliverabilities. I have reason to know that pretty well on account of 12 wells we had and some more that Skelly had and also on the record of the Peerless wells that feed to Cabot Carbon Company,—I would be very much surprised if those wells had no underage by next spring.

Q. Now, then, you have also assumed that this well you would get the full—to produce its full allowable for a period of thirty days, haven't you?

A. Well, I figure we would keep it approximately in proper ratable standing during its life.

Q. You assume that they won't have any bad luck at all with the well.

A. Oh, no, I expect some bad luck with all wells,—they're like people.

Q. You have anticipated no increase in taxes, isn't that correct?

A. That's right. I just figured five percent gross production tax.

[fol. 839] Q. Assuming Mr. Witness that they drill this well into the natural gas and under the provisions of the statute of this state we now have that gas in our possession and we now own it, we would be entitled to capitalize the entire value of that natural gas in place at whatever rate, four or five or ten, what it's worth.

Mr. Cullison: We object, not cross examination, involving a conclusion of law and economics, this gentleman hasn't so qualified.

Mr. Pruet: I thought he qualified on anything,—he testified on the law and everything else, I think he so qualified.

Mr. Cullison: Did you fully understand the question?

Chairman Bond: We don't.

Mr. Pruet: Strike that question.

Mr. Pruet:

Q. If we assume, as provided by statute, when we drill the well into the common source of supply we reduce all the natural gas under that section 8 to our possession and if it's now in our possession, Peerless Oil Company, and it is now owned by us, if you capitalize the gas in place at the various *values*, add thereto the cost of drilling the well, the percentage of income would be far, far less than what you computed, wouldn't it?

Chairman Bond: You may answer.

A. You put something on the end of that I wasn't thinking about.

Mr. Cullison: I object to that, too vague.

[fol. 840] Mr. Pruet: I think he understands. He started to answer it.

Mr. Cullison: Capitalize the gas under the entire section instead of the lease at fifty dollars an acre?

Mr. Pruet: That's right, plus the cost of drilling, completing and producing the well.

Mr. Cullison: You capitalize the gas down in the ground instead of the value of the lease, is that it?

Mr. Pruet: When it is reduced to possession, yes.

Mr. Cullison: We object, a hypothetical question leaving out manifestly essential elements in trying to capitalize something down 2800 feet under the ground when everybody knows that it has to be extracted subjected to regulations and all that.

Chairman Bond: Can't the witness answer he doesn't know?

Mr. Pruet: He started to answer it.

Chairman Bond: If he is so wise that he knows, let him answer it.

Mr. Cullison: We object, not all the essential elements to permit an answer.

Chairman Bond: Overruled and exception allowed.

A. If,—On the basis of that assumption the earning would be less but I never heard of anybody doing that.

Mr. Pruet:

Q. If the statute says we own this gas after we drill the [fol. 841] well into the ground and if we capitalize that gas as part of our property in ascertaining the value of our property then if you compute it on that basis the percentage of income would be far less than you computed it on Exhibit 81.

Mr. Cullison: Same objection.

Chairman Bond: Overruled and exception allowed.

A. It would be on that assumption but I never heard of anybody capitalizing gas in place. I'm not talking about Cities Service Gas Company but the industry as a whole would capitalize this $52,000.00.

Q. We object to all that last part and move to strike it because it isn't responsive.

Chairman Bond: Objection sustained.

Mr. Pruet:

Q. I will ask you this,—You say you never have heard of anybody doing that, I will ask you if that is part of their evidence in that rate hearing before the Federal Power Commission, if the Cities Service Gas Company didn't present there, through the testimony of Ralph Davis, their estimate of the value of their reserves in place, of all fields, at a total of twenty million dollars?

Mr. Cullison: To which we object, injecting a collateral issue, not tending to prove any issue in this case.

Chairman Bond: It is evidently an attempt to impeach the witness, not an attempt to prove anything in the case.

[fol. 842] Mr. Cullison: He is now applying it to Cities Service Gas Company.

Mr. Pruet: I am proving what you did or tried to do and impeaching the witness by making him admit it, if he did. I am asking the witness if you didn't present that evidence, if you know,—if you don't know——

Mr. Cullison: Did the Court rule on it?

Chairman Bond: The Court ruled on it quite awhile ago. The attorney wasn't attempting to prove anything about the relevancy or competency of the testimony but he is trying to impeach the witness—way it looks to the Commission.

Mr. Cullison: He didn't ask if he did it. He asked if Cities Service.

Chairman Bond: He is an employee of Cities Service and testified in the case. He can explain whether he did it, whether he knows about it, whether it was done, if he knows. If he doesn't know, let him state.

Mr. Cullison: Did Your Honor understand that he testified in that case?

Chairman Bond: Why doesn't he state he didn't testify in the case and doesn't know.

Mr. Cullison: I thought you said you know.

Mr. Pruet: Let me withdraw that.

[fol. 843] Mr. Pruet:

Q. You testified you never heard of that method, haven't you?

A. Yes.

Q. Of computing the value of the gas in place, gas reserves as an element in determining the value of gas properties, you never heard of that.

A. No.

Q. Who is Ralph Davis?

A. He is a consulting geologist in Pittsburgh, Pennsylvania.

Q. Were you present at this Federal Power Commission hearing?

A. Part of the time.

Q. Do you know Ralph Davis?

A. Yes sir.

Q. Were you there when he testified?

A. Yes, sir.

Q. I will ask you if you didn't hear him testify and make the estimate of the value of the Cities Service Natural gas reserves in place, of the leases and minerals, that Cities Service owned at that time.

Mr. Cullison: We object, not cross examination, not proving any issue in the case.

Chairman Bond: The witness testified he never heard of it. I think that was his first answer, if he has heard of it, let counsel show it.

Mr. Pruet: That is my purpose.

A. Mr. Davis' testimony was a value of proven leases.

[fol. 844] Mr. Pruet:

Q. Well the Conwell is a proven lease, it has a well down in the gas, hasn't it?

A. Yes, but Mr. Davis wasn't capitalizing that.

Q. Well, he testified as to the value of it.

Mr. Cullison: Same objection.

Mr. Pruet:

Q. For the purpose of determining the value of your company's reserves and properties.

Chairman Bond: Objection sustained, unless you confine your questions to whether or not he ever heard of this and whether or not he heard Davis testify.

Mr. Pruet:

Q. You heard Davis testify on that point?
A. Yes, I did.
Q. Then you have heard of it.

Mr. Cullison: Same objection.
Chairman Bond: Overruled. Exception allowed.

Mr. Pruet:

Q. You have heard of it then.
A. Yes, to that extent.

[fol. 845] A. C. KLEINSCHMIDT, called as a witness, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Rolston:

Q. State your name.
A. A. C. Kleinschmidt.
Q. What is your position with Cities Service Gas Company?
A. Assistant Treasurer.
Q. How long have you held that position?
A. About ten years.
Q. How long have you worked for Cities Service Gas Company?
A. Twenty-nine years.
Q. Mr. Kleinschmidt, Mr. Mayfield, in his testimony on behalf of the applicant in this case, testified that he used a rate of interest of six percent in the computation that he made relating to testimony that he gave. Do you know the rate of interest for secured loans of sizable amounts, for companies like Peerless and Cities Service Gas Company?
A. Well, I don't know about Peerless, but companies such as ours, around three percent,—two and seven-eight-s.
Q. Is that the ordinary rate?
A. The rate for medium credit is around three percent.

Mr. Pruet: Now, we object to that testimony and move that it be stricken as incompetent, irrelevant and immater-

ial, for the reason that Mr. Mayfield made a plain hypothetical computation, and Cities Service furnished the rate [fol. 846] of interest upon which he made it,—six percent.

Mr. Mayfield: That's the way I understood it. When I was asked the question I said I would have to have some rate of interest and six percent was the rate given me.

Mr. Pruit: I'll withdraw the objection.

The witness was excused.

Mr. Pruit: Before I forget it, I want to move to strike all that last session of Mr. Ross Stuntz's testimony, because it is incompetent, irrelevant and immaterial. And I object to Exhibit 81, as incompetent, irrelevant and immaterial. It was admitted over my objection and I now move that it all be stricken, as incompetent, irrelevant and immaterial.

Chairman Bond: Overruled,—exceptions allowed.

[fol. 847] Walker T. Pound, recalled for further cross-examination.

By Mr Rolston:

Q. Mr. Pound, you are the same Walker T. Pound who has testified heretofore? You testified for the applicant?

A. That's correct.

Q. And you are the Conservation Officer of the Corporation Commission of Oklahoma, correct?

A. Yes, sir.

Q. And in your testimony you testified concerning the waste of gas in the Guymon-Hugoton pool in Texas County, Oklahoma?

A. That's correct.

Q. I will ask you, Mr. Pound, if you didn't make a statement before the Federal Power Commission, at Oklahoma City, Oklahoma, on October 9th, 1945,—that is, you read a paper to the Commission, that you prepared?

A. I did.

Q. I will ask you if in that statement, or that paper, you did not, among other things, make this statement,—"insofar as the physical waste of dry natural gas is concerned, there is none in Oklahoma", end of quote?

A. I made that statement.
Mr. Rolston: That's all.

Examination.

By Mr. Pruet:

Q. Do you wish to explain what you were talking about when you made that statement?
[fol. 848] A. I can,—yes.
Q. I wish you would do that.
A. I meant that there was no sizable amount of venting of gas as we think of it in oil fields, from dry natural gas wells.
Q. Now, in rebuttal of your testimony, Mr. Pound, the Cities Service Gas Company introduced considerable evidence as to the relative merits of drilling in by rotary and drilling in by standard tools,—in your testimony did you intend to take sides, one way or the other, as to the relative merits of drilling in by rotary and by standard tools?
A. No, I did not.
Q. You did not?
A. I did not.

Judge Cullison: I object to that as improper cross-examination,—all we asked this witness was whether he made a certain statement, and he said he did.

Chairman Bond: Well, he has right to cross-examine him on that statement, that part of it. Overruled,—exceptions allowed.

Q. Did you in that statement or in your testimony say or intend to criticize, or say that it isn't proper to acidize wells in the Guymon-Hugoton Field?

Judge Cullison: Just a minute,—I don't know whether he is alluding to this statement——

A. I did not so say.
[fol. 849] Q. As I understood your testimony, it was to the effect that——

Judge Cullison: We are going to object, as heading and suggestive—

Chairman Bond: Don't lead the witness, except on cross-examination,—on cross-examination it might be proper——

Q. What did you say, or what do you say, if anything, as to the practice that takes place in the Guymon-Hugoton Field, in respect to permitting gas wells to flow during the drilling in process and at all other times?

Judge Cullison: Now, we object to that——

Chairman Bond: The issues will permit this witness to be examined on the venting of gas,—he said he meant the venting of gas and the witness stated he knows the situation, and under the rules of the Commission that gas must go back into the line and not into the air.

Judge Cullison: Now, Your Honor, he has opened up that question—our witness have gone——

Chairman Bond: The Commission is limiting it to waste in the venting of gas,—he can explain what he meant when he said there was no waste,——

Mr. Pruet: We'll withdraw the question at this time and when they close I'll put him back on.

Chairman Bond: Very good, proceed, Gentlemen. Now, the Commission is going to be liberal with you in the matter of cross-examination. We'll not have a few lines of any [fol. 850] statement read into the record or placed in the record and deny the other party an opportunity to explain the statement.

Q. I will ask you if in that statement he read from you made before the Federal Power Commission, if you didn't state——

Judge Cullison: Wait a minute,——

Mr. Pruet: Well, now on this point, I'm going to object to this witness being called for further cross-examination after we have closed, and I move that his testimony now be stricken.

Chairman Bond: Proceed, gentlemen.

Mr. Rolston: We want Mr. Green sworn, Mr. Floyd Green.

Reporter's Note: The witness, Walker T. Pound, is now withdrawn from the witness stand, and,

FLOYD GREEN, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rolston:

Q. State your name to the Commission.
A. Floyd Green.
Q. You are attorney for the Commission?
A. Conservation Attorney,—yes sir.
Q. I'm putting you on the stand, Mr. Green, because Mr. Pruet has forced me to do so.
[fol. 851] Q. Mr. Green, as Conservation Attorney and Attorney for the Commission, did you prepare, file and introduce a Petition of the Corporation Commission of the State of Oklahoma, in the matter of the Mid-Continent Gas Transmission Company, Docket G-699 of the Federal Power Commission of the United States of America?
A. Yes, sir.

Mr. Pruet: We have no question as to whether that is the original or not,—I think it's a copy,—we'll waive further identification of it.

Mr. Rolston: We will offer paragraph 6, or Section 6, of this Petition and it is the same number in the other Petition, the other case Docket G-599.

Mr. Pruet: We'll agree that it is.

Mr. Rolston: We offer in evidence, as Respondent's Exhibits 82, and 83, respectively, paragraphs or sections, number Six, of each one of these Exhibits.

Chairman Bond: Received,—Will you read Section 6, or Paragraph 6, Mr. Green?

Reporter's Note: The witness read aloud, as follows:

"6. That the State of Oklahoma is materially interested in the price paid for natural gas at the wellhead in the Guymon-Hugoton Field since a portion of the operating expenses of the State is received from a tax on natural gas, [fol. 852] to-wit: 5% of the purchase price of gas at the wellhead; that the trend of the purchase price at the wellhead in Oklahoma has been declining until recently and the price here'ofore paid for natural gas in the Guymon-Hugoton Field has been generally lower than the price paid for natural gas in other fields in Oklahoma; that this Petitioner is therefore interested in securing a greater purchase price

of natural gas at the wellhead in the Guymon-Hugoton Field so as to enable it to more effectively prevent waste, enforce ratable taking and protect correlative rights."

[fol. 853] Floyd Green: Paragraph six of each one of the exhibits.

(Floyd Green reads the exhibit.)

A. That is in both petitions, I also filed a petition of intervention on behalf of the Cities Service from the pipe line from the Hugoton field to Kansas City.

Chairman Bond: Then you used the same language in assisting the Cities Service then—you had the other company?

A. That is right.

Earl Pruet: And you stated then and you now state that a higher price will conserve and prevent waste?

A. Yes.

Joe Ralston: When you filed this petition, you filed it for the the Corporation Commission of Oklahoma?

A. Yes.

Witness excused.

Joe Ralston: May it please the Commission, Cities Service Gas Company rests.

[fol. 854] Walker T. Pound, Conservation Officer of Corporation Commissioner on the stand.

Witness examined by Earl Pruet:

Q. Counsel asked you whether they called you back for cross-examination, when asked about a statement you made before the Federal Power Commission, I will ask your if you also said that in your opinion the Corporation Commission of this state has authority to fix the price of natural gas for the protection of waste in the Guymon-Hugoton Field?

Mr. Cullison: We object to that as self serving, and object further because that is a question of law, and correlative rights are involved.

Chairman Bond: You can read that portion of his testimony where he said that the price of gas was so much.

Earl Pruet: I am offering this to show that in the same statement he made the statements consistent with the testimony in this trial.

Chairman Bond: Read the statement here.

Earl Pruet: That statement is already in evidence.

Chairman Bond: The entire statement?

Earl Pruet: Yes, if you want to direct your attention to that statement it is in the record here. I think I have contended all of the time that Mr. Pounds was in favor of higher [fol. 855] prices basing it on his previous statement. When this argument is worn out, I will if permitted, to—will admit that Mr. Pounds has been for a higher price for gas.

Q. I will ask you Mr. Pounds, if in this statement you made before the Federal Power Commission if you didn't make this statement, "In conservation of oil and gas, no more effective agent has been found than an adequate price"?

A. I did.

Mr. Cullison: To which we object as not the proper rebuttal, the only question here, based on that would indicate that there is waste, in another sentence he stated that there was no waste, it is entirely foreign to that.

Chairman Bond: You can't ask a man one sentence out of one hundred sentences and make sense out of it. The entire paper must speak for itself. You say that this witness said that there was no waste. Maybe he testified that it ought to be ten cents to prevent waste. You can't introduce one sentence and destroy a witness-*es* testimony or build it up. The Commission is going to hold that one issue is waste. Any question that pertains to waste that appears in this paper, is admissable.

Mr. Cullison: I agree to the question pretaining to [fol. 856] whether there was waste.

Earl Pruet: I will ask you if you read this statement underlined in red of page 2 of Exhibit 57?

(Whereupon the witness read statement suggested by Mr. Pruet.)

Q. You made that statement then and you make it now?

A. Yes.

Mr. Cullison: Same objection.

Chairman Bond: Overruled, exceptions allowed.

Chairman Bond: Is there any other statement in that with reference to waste, it seems to be a general statement, is there any other statement in there that pretains to gas?

Earl Pruet: Yes.

Chairman Bond: Gas? The Commission isn't critical of counsel, it-s your duty to take advantage of things for your clients, but the Commission owes its duty to a witness, to not allow one or two words to destroy him when the entire statement may save him, if it's the half truth or the whole truth, the Commission wants to know it. What did he say the price of gas ought to be, ten cents in the Hugoton Field?

A. I don't think that I did say that in the paper Judge.

Earl Pruet: The only statement was the history of the general order in the Hugoton Field.

[fol. 857] Chairman Bond: The Commission will sustain an objection where it mentions oil and gas wells together. Were you talking about all the fields in the state?

A. I was referring to all fields in the state. I didn't mean what the statement appears to mean.

Chairman Bond: If you didn't mean what the statement appears to mean then explain what you did mean?

Mr. Cullison: Can we object to the question of the Commission?

Chairman Bond: You can make your objection.

Mr. Cullison: He hasn't shown that it-s ambigious.

Chairman Bond: It doesn't have to be, you object because it is too general.

Mr. Cullison: We object to it because it is not confined to whether it is or is not, ambigious

Chairman Bond: You can make all the objections you want too. The Commi. sion will rule and if a man gets on the stand you will have the right to cross examine him and ask questions.

Mr. Cullison: Did you rule?

Chairman Bond: We overrule your objection, exceptions allowed. Do you have a statement to make Judge Cullison?

[fol. 858] Mr. Cullison: Not so far as the physical waste.

Mr. Cullison: I want to read something to you.

(Reads the next to the last paragraph, page 7, Exhibit 57.)

A. I did make that statement, Judge Cullison and the statement is misleading I think.

Chairman Bond: If it is misleading, read it all so the Supreme Court will understand it.

Mr. Cullison: We hav-n't made any complaint that it is misleading.

Chairman Bond: Now you used two or three words that could be.

A. That is what I said in respect to dry natural gas.

Chairman Bond: Is that all that is in that?

A. That is all that bears on the subject.

Chairman Bond: Ts that what you meant?

A. What I meant fully, I don't know whether the Commission wants any further statement on it or not.

Chairman Bond: The Commission doesn't want anything but the facts, if you have any explanation to make, make it—if not, let it stand.

A. I do have.

Mr. Cullison: Note our objection to his making a statement.

Chairman Bond: Overruled.

Mr. Cullison: Note our exceptions.

[fol. 859] A. This statement was made before the Federal Power Commission at the hearing for the purpose of investigating the gas business. I didn't know the formal title. We were given an agenda or list of subjects which they wanted covered at the hearing, one of them was, as I remember and I am certain that it was, it had to do with venting of oil in oil fields and venting of gas in gas fields—what I meant was no longer as once, was the custom were dry natural gas wells allowed to blow into the air and waste billions and billions of feet of gas—and in that they were never vented in dry gas fields.

Earl Pruet: State whether or not as Conservation Officer the study you made by contacting the operators in the field and other ways whether there is some waste of natural gas in the Guymon-Hugoton Field?

Mr. Cullison: We object as not rebuttal and its self serving?

Chairman Bond: Sustained.

Joe Ralston: Mr. Pounds, it is a fact that on October 9, 1945 that at the hearing before the Federal Power Commission you did make this statement——

Earl Pruet: Are you reading, if so give the page and what you are reading from.

Joe Ralston: Page 7, the next to the last paragraph of his paper on October 9, 1945, Exhibit 57:

"In so far as the physical waste of dry natural gas is [fol. 860] concerned, there is none in Oklahoma"?

Earl Pruet: We object, as repetation?

Chairman Bond: Sustained.

Joe Ralston continues with the witness:

Q. At the time that you read this paper and made that statement you knew what physical waste was did you not?

A. Well I think I did, Yes sir.

Q. And you know what dry gas is?

A. Yes sir.

Q. And you know what the word "none" is?

A. Yes.

Q. Now you have explained in answer to Mr. Pruet-s question that you didn't mean to say what you did say, is that correct?

A. If I understand your last question correctly, that is true.

Q. Is there some distinction between wasting gas and venting gas?

A. I think that there is.

Q. You testified did you not——

A. They are not syno-mous necessarily.

Q. You meant to say then that the venting of gas was not wasting of gas as mentioned here?

A. To the last question?

A. Yes.

[fol. 861] A. The answer to the question about venting of gas and wasting of gas, the two terms are not necessarily always syno-mous, sometimes it is wasteful and sometimes it isn't.

Q. Will you tell us now what you mean when you say the gas is vented in the Guymon-Hugoton Pool?

A. I don't recall having said that today.

Q. Didn't you say it here sometime back?

A. Yes I said when wells were drilled in with cable tools or when wells were acidized there was in my opinion always some venting of gas.

Q. Didn't you testify in that procedure that was followed that was waste?

A. I don't remember my exact testimony. I will say that if I didn't then——

Q. You will say it now that what?

A. That the venting of gas unnecessarily is wasteful.

Q. Now in the drilling and completing of the wells in the Guymon-Hugoton Pool the way Cities Service drills and completes and acidizes and Peerless and other producers is their venting gas wasteful when its blown off?

A. If its done to greater degree than necessary, its both.

Q. Do you know whether its done to a greater degree than necessary?

A. I have no opinion on it.

[fol. 862] Q. Have you been out there when they have done it?

A. Yes sir.

Q. Who?

A. The ones that I have seen were the wells belonging to Republic Natural Gas Company, by the way, I believe those wells happened to be on the Kansas side of the field

Earl Pruet: State whether or not from your investigation and from what you have learned in your capacity as Conservation Officer, there is more venting of Natural Gas in drilling and acidizing and completing the gas wells in the Guymon-Hugoton Field than is necessary?

Mr. Cullison: We object because that is not proper rebuttal?

Chairman Bond: Sustained.

Earl Pruet: I put him on here to tell about the venting of gas and he has a right to tell about it.

Mr. Cullison: And we further object because it is an attempt to make an impression. We attempted to show that his statement was false when he made it. You confine your statements to what he has said before and we won't object.

Earl Pruet: You are trying to twist those statements around.

Joe Ralston: We object to statement of counsel.

[fol. 863] Earl Pruet: State whether or not, in your opinion, if the price of natural gas is fixed at a minimum of ten cents at one thousand cubic feet that such waste will be prevented?

Joe Ralston: We object to that as not being rebuttal.

Chairman Bond: Its not rebuttal and its reputation.

Earl Pruet: If you will agree to it, I will withdraw the question.

Mr. Cullison: Doesn't the original record show what he testified to?

Earl Pruet: That he so testified.

Witness excused.

[fol. 864] Mr. Earl Pruet, being sworn, testified as follows:

Reference was made by the witness Stuntz to the fact that Peerless Oil & Gas Company, applicant in this case, is selling gas to the Cabot Carbon Company for four and a half cents. Since I negotiated all these matters for the Peerless Oil & Gas Company and since they have no representative in the State, the only way I can prove the actual facts on that is by my own testimony. The record will show that we made our first tender of the gas in the well involved in this case, to Cities Service Gas Company in March 1945. We made the second and last tender of gas in that well in June 1945. Thereafter and on August 13th, 1945, we made a tender of gas to Cabot Carbon Company from four wells in the Guymon-Hugoton field by registered mail, the original of which was sent to Cabot Carbon Company and a copy of which was sent to the Commission and I now offer in evidence a copy of the same as the next exhibit in the case.

Mr. Cullison: We object, injecting a collateral issue.

Chairman Bond: Overruled and exception allowed.

Mr. Cullison: And it's hearsay. If this gentleman knows prices, and he is the only one that does know, he can't get a man from Peerless on this State—yes, we are sorry—we don't care anything about the tender.

[fol. 865] Chairman Bond: Generally a lawyer tries his law-suit according to his own ideas and the Commission rules whether or not he is trying his lawsuit according to law.

Mr. Pruet: That tender shows we tendered the gas from those four wells at the rate of five cents per thousand cubic feet which was within the terms of the Commission's Order regarding that applicant, then and now in effect. Thereafter and on January 18th, 1945, we made a tende- of another well, gas from another well, Nash No. 1.

Mr. Cullison: Same objection.

Mr. Pruet: To save time I will agree you can have a general objection to everything I say.

Mr. Cullison: And exception too?

Mr. Pruet: That's all yours. If you want to agree, it may be overruled.

Chairman Bond: You won't be overruled until the Commission rules on it.

Mr. Pruet: This other tender I would like to have marked Exhibit No. 85.

Mr. Cullison: Same objection.

Chairman Bond: Received, objections noted and exceptions allowed.

Mr. Pruet: Now, we tendered that gas at five cents a thousand cubic feet because that was in compliance with the order of the Corporation Commission.

[fol. 866] Mr. Cullison: We object to an argument on a question of law notwithstanding the fact he is a lawyer he can't argue the law while in the capacity of a witness.

Chairman Bond: Let the instrument show for itself.

Mr. Pruet: The first four wells were connected sometime in 1945 and it wasn't until, as I recall, in December of 1945 when we began to receive payments from Cabot. We learned we w-ren't getting five cents a thousand feet. We had a lot of correspondence about it—final dope I got on it from Green, Eugene Green is his name——

Mr. Cullison: We object as hearsay.

Mr. Pruet: At the time we learned we were not going to get the full five cents on all the gas delivered to Cabot this lawsuit was already pending,—first hearing on it was had, and I then informed——

Mr. Cullison: We object as res inter alios acts.

Mr. Pruet: At that time this case was pending.

Chairman Bond: Don't testify to hearsay, testify what you know.

Mr. Pruet: At the time I knew we weren't getting the full five cents this lawsuit was pending, which, in any judgment will determine the controversy also we have with Cabot.

Mr. Cullison: He is telling what it is going to be the precedent of.

Chairman Bond: Objection sustained.

[fol. 867] Mr. Pruet: Now, with reference to the negotiations with Cities Service in regard to the gas in this case. Their proposition which they made us—I negotiated with them a long time before I ever filed this lawsuit—carried with it the necessity that we dedicate all of our acreage to their pipeline for the life of the leases. Knowing as we did that they were also at the same time negotiating with the Republic and with Harrington & Marsh for a dedication of their acreage and that if those contracts were made that would be a dedication of all leases.

Mr. Cullison: We object to this witness testifying in narrative, unless someone asks the question we can't tell what to object to and we are considered rude when we break in.

Mr. Pruet: I don't consider you rude. I just know you are.

Mr. Cullison: He is telling all the negotiations and putting his conclusion of what was carried on between him and our company.

Mr. Pruet: What I want to say then—I am sure the contract which you tendered us is in evidence, the first contract and every other proposition which you made us.

Mr. Cullison: Our's you mean?

A. You offered me a copy of Skelly's contract, the same contract which you said was the contract you would make with us.

Q. Didn't I ask you whether you wanted to use it in this case and you said you were drawing a contract for others.

A. No, nothing like that was ever said. You didn't say [fol. 868] anything about using it in this case, wasn't anything to that effect said.

Q. Didn't you say you were drawing a contract for other people.

A. No, I never did draw a contract for other people. This blank you told me was the type of contract you would require which included a dedication of all our one hundred and fourteen thousand acres and provided the only way we could get a higher price when and if you paid somebody else more. I knew if you got Republic and Harrington down on the same kind of contract nobody would ever get more. That's the reason we never got together. Now object to all of it.

Mr. Cullison: We move, having no opportunity to object because no questions, pending, that it be stricken, that it is an attempt to avoid litigation and the Court will not permit one who has tried to do those things, which the other entered in good faith, to do those things, to come in and tell about the attempts of each party to avoid that litigation.

A. The reason I offered this,—they have continually and repeatedly been telling this Commission throughout this trial the very liberal offers they made us, they offered to do with us anything they offered to do with anybody else and that is the purpose of my statement. I am under oath to rebut it. They never did offer us a contract which they offered Republic, which provided for a five year renegotiation until after we made a tentative dedication of our prop- [fol. 869] erty. They never did make us an offer of such kin-, a contract as they made recently with Harrington & Marsh.

Mr. Cullison: Your Honor can well see the force of that rule of law that is recited everywhere. No lawyer could attempt in good faith to avoid litigation except at the risk of the other man testifying. Will that compel me to take the stand? He says it can't be proven by anybody else.

A. I said I was the one negotiated it.

Mr. Cullison: I don't like to take the witness stand and where things can be proven by other people it is proper; the rule that attempts in good faith, attempts to avoid litigation are privileged. We offered then and we offer now to b-y their gas on the same terms as anybody else.

Chairman Bond: The Commission will sustain your objection to any testimony pertaining to an offer of compromise or pertaining to efforts of compromise, but the Commission will permit to stand all testimony, that is in rebuttal to testimony offered.

Mr. Pruet: You mean testimony in regard to the Cabot transaction?

Chairman Bond: Anything in rebuttal stands.

Mr. Pruet: I moye their own pleadings and all statements they made in the course of this trial which has any reference to the offers they made us be stricken from the record [fol. 870] and not considered by the Commission. If it's fair for me, it's fair for them and they shouldn't have been in he-e all this time.

Chairman Bond: The Commission has ruled, any of your testimony that is in rebuttal stands and anything you testify in rebuttal to his pleadings or to his contracts or anything that he offered in testimony, is rebuttal testimony and it is admissible. The only thing that the Co nmission has ruled out is your testimony of offers of compromise, efforts to compromise a lawsuit. You may proceed.

Mr. Rolston: I would like to ask Mr. Pruet a question or two.

By Mr. Rolston:

Q. You testified here that you tendered this gas to Cabot at what price?

A. Now you objected to that when I tried to——

Q. Well the Commission let it in.

A. No, they sustained it and let the instrument show for itself. It is in evidence. If you want to know, just read it.

Q. Now, this tender shows that you tendered gas to Cabot Carbon Company at five cents per thousand cubic feet, you did that on August 13th, 1945, is that correct?

A. Whatever the date of the instrument is, it is correct. Whatever it is, is correct.

Q. The other, January 18, 1945.

A. Whatever it is, it's correct.

[fol. 871] Q. You made tenders to the Cities Service Gas Company in May and June, 1945.

A. March and June, 1945, that's my recollection.

Q. You filed this lawsuit against the Cities Service Company in October, 1945.

A. Sometime October or early November, that's correct.

Q. You tendered the gas to Cities Service Gas Company at six cents.

A. That's correct, yes, sir.

Q. You tendered to Cabot at five cents, that's correct?

A. No argument about that.

Q. Why did you tender to Cabot at five cents and file suit against us for ten cents?

A. That is very easy. At the time I tendered to Cabot there was an order of this Commission entered as an emergency measure providing that they would take the gas at five cents a thousand cubic feet; that tender was made in compliance with the Commission's Order which applied only to the Cabot Carbon Company and did not apply to Cities Service Gas Company.

Q. You made this tender at five cents you say in accordance with the Order of the Commission?

A. That's right.

Q. Did the Commission order you, Peerless Oil and Gas Company to sell their gas to the Cabot?

A. No, they didn't order us to.

Q. You did it voluntarily.

[fol. 872] A. We did it because their lines were the nearest lines accessible to those wells we tendered and because the Order of the Commission then in effect provided for five cents.

Q. That was a minimum order, you could tender it at six cents or ten cents.

A. It provided five cents, what they would pay for it, my recollection was.

Q. Not less than five cents.

A. I don't know what is in the order. My recollection is they provided a price of five cents.

Q. Anyway, after you tendered it to us for six, you tendered to Cabot and then you sued us for ten.

A. That is absolutely correct.

Q. Why did you discriminate?

A. I'm not discriminating,—because this same Order, one in this case will affect Cabot just the same as you, what you will pay us, if one is entered,—the only way you could get any kind of Order at all. I expect that to affect Cabot, Cities Service and every one in the field, if one is entered.

Q. You still didn't have to sell gas at five cents—tender at five cents.

A. No, we could have tendered at one hundred cents if we had wanted to. When one of those tenders was made we were in process of asking that a higher price be fixed before any connection was made, we were asking for that.

Q. That matter of fixing price in the field is in the future. [fol. 873] A. Yes, sir. We don't have to dedicate our acreage to Cabot either. We can take it loose at any time we want to.

Chairman Bond: You may cross examine yourself, if you like.

A. No questions.

Mr. Pruet: I would like to have leave to supply the Harrington contract with Cities Service, the number would be 86 and will be the gas purchase contract between Cities Service Gas Company, and Harrington & Marsh.

Chairman Bond: Permission granted to furnish it within how many days?

Mr. Pruet: I will furnish it in two days. I may get it tomorrow, but I might be busy at the office and not get it here tomorrow.

Chairman Bond: I'll give you five days.

Mr. Pruet: We Rest.

Mr. Rolston: We Rest. We have a final motion we want to file in this case at the close of all the evidence, as I understand everything is completed. We have filed this request with the Commission as our Exhibit No. 87.

(Counsel Reads the Motion to the Commission.)

Chairman Bond: Is there any objection to the request?

Mr. Pruet: I have no objection. I think they should be made.

[fol. 874] Chairman Bond: Have you any objection?

Mr. Green: We always do.

Chairman Bond: Request granted.

Mr. Rolston: What we want, we want separate findings of fact and conclusions of law.

Chairman Bond: If we fail to make them you want to take exception to the action of the Commission?

Mr. Rolston: We may want to do that,—all we are trying to ask——

Chairman Bond: In other words, you want the Commission to make separate findings of fact and law in the judicial case, separate findings of fact and law in the legislative case or do you want them to make separate findings of fact and law in the consolidated case?

Mr. Rolston: I merely made this in the judicial phase of the case. We request the Commission to make findings of fact and conclusions separately in the judicial phase of the case.

Chairman Bond: You don't care whether we make them in the legislative case.

Mr. Rolston: As I understand that is the practice. We are interested——

Chairman Bond: If the Commission follows its general procedure and practice it will make separate findings of fact and conclusions of law—if it makes conclusions and [fols. 875-876] findings in one case it will *will* make them in both.

Mr. Green: What you want is two orders.

Mr. Rolston: We aren't so much interested what you are going to do in the legislative case but we don't want all the findings lumped together in the legislative and judicial.

CASE CLOSED

Chairman Bond: The Commission will grant your request. We will close the case and take it under advisement. It may be some days, before the record is transcribed and you may not get an opinion for some time.

[fol. 877] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed September 12, 1946

Comes now Respondent, Cities Service Gas Company, and specifically requests the Commission, in the judicial phase of the cause, namely, the dispute etween Applicant and Respondent to make and separately state findings of fact and conclusions of law based upon the competent, relevant and material evidence if any, admitted and received by the Commission in this proceeding.

Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys of Record for Respondents Cities Service Gas Company.

[File endorsement omitted.]

[fol. 878] ANNOUNCEMENT OF OPINIONS OF COMMISSION

Thereafter, on December 9, 1946, the Corporation Commission of the State of Oklahoma being in session, and counsel for the Applicant, Respondent and Intervener being present, this cause came further on for hearing, at which time the following proceedings were had:

Chairman Bond: Gentlemen, the Commission will hand down an opinion this morning in Case No. CD 1054, or, two opinions,—both are in Case No. CD 1054 but one is for the Field at large and certain controverted wells. The Commission has also made calculations and has fixed the price of seven cents for gas in the Field. You gentlemen may take such exceptions and make such record as you wish.

Judge Cullison: Has the Commission prepared written opinions?

Chairman Bond: Yes.

Reporter's Note: At this point counsel for the respective parties received from the Commission copies of the opinions prepared by the Commission.

Chairman Bond: Counsel may retire, examine the opinions, then return and make such record as you wish.

Reporter's Note: Counsel then retired with copies of opinions and the Commission proceeded to other business.

[fol. 879] Thereafter and on the same date, December 9, 1946, after examination of the opinions prepared by the Commission, counsel for the respective parties again appeared before the Commission in open session and the following further proceedings were had:

Mr. Rolston: May it please the Commission, Judge Cullison and I and Mr. Pruet have gone over the two Reports. We have gone over, examined the two reports which the Commission has handed down this morning in Case No. CD 1054. There are two separate orders. The Order Number doesn't appear on the copy I have.

Mr. Floyd Green: They haven't been filed yet.

Mr. Rolston: We have a suggestion or suggestions concerning both of these orders, or reports, which we wish to make to the Commission.

Chairman Bond: Very well, the Commission didn't sign the orders, so we may make such corrections as may be made, the only thing we have decided is the gas rate, price, and pressure and we may change the orders in other respects.

Mr. Rolston: Getting back to the order that was handed down this morning there seems to be a little uncertainty or question as to the time,—we would like to suggest to the Commission that on the last page of the Order, in that part of the order, in the one entitled Peerless v. Cities Service Gas Company, and in which the intervenors are not concerned, in paragraph 5 of the Order, on the last page, we would like to have the words, "entered as of and" [fol. 880] stricken from the order, making paragraph number 5 to then read "This order shall be effective as of January 1st, 1947."

Mr. Pruet: Well, the provision is the same in both of the orders but the number of the paragraph is different.

Mr. Green: Counsel wants the order to be effective as of January 1st, 1947, but entered as of today.

Mr. Rolston: Yes. Add in the other *other*, which includes the intervenor, on the last page of the Order, paragraph number 2, strike out the words, "entered as of and", so that the last page, paragraph 2, shall read, "This Order shall be effective as of January 1st, 1947."

Chairman Bond: Any objection to these changes?

Mr. Pruet: I don't have any.

Chairman Bond: The Commission will make that change before the Orders are signed.

Mr. Rolston: Can we have the record show that we are allowed exceptions to each and every finding made by the Commission in each of these Orders?

Chairman Bond: Let the record so show.

Mr. Rolston: And in the Orders themselves?

Chairman Bond: Let the record so show.

Mr. Rolston: Now, the Commission is thoroughly familiar with this case and with all things done, all the proceedings [fol. 881] had in the case, and we would like to submit two Motions at this time and we would appreciate it very much if the Commission would rule on these Motions so that we could at this time give our Notice of Appeal and order our record and file our Motion for Supersedeas. Now, the Motion we desire to file first, and present, is our Motion to set aside Findings of Fact and Conclusions of law and

Substitute Therefor Certain Find-gs of Fact and Conclusions of Law in the Judicial Phase of said cause and Render Judgment for Respondent. If the Commission cares to take the time for me to read this Motion I would be glad to read it.

Chairman Bond: You may read the Motion.

Reporter's Note: Mr. Rolston then read to the Commission said Motion, which Motion is the identical instrument which was thereafter marked Exhibit 88, thereafter filed with the Secretary of the Corporation Commission, and which appears in this record in proper order, therefore, to avoid duplication same is not copied at this point.

[fol. 882] (At the close of the reading of the motion to set aside findings of fact and conclusions—law and substitute therefor certain findings of fact, etc. said motion was handed to the reporter for marking as an exhibit, which motion is marked Exhibit No. 88.)

Chairman Bond: Received and overruled.

Judge Cullison: Note our exception.

Chairman Bond: Exception allowed.

Mr. Rolston: Now we have to present at this time, in view of the overruling of the Motion to set aside findings of fact and conclusions of law and to substitute findings and to render judgment, we have a motion for new trial. The Motion your Honor I don't think contains anything else than what is in the usual statutory motion for new trial.

Chairman Bond: With that understanding, overruled and exceptions allowed.

Mr. Rolston: We do have a matter or two mentioned.

Chairman Bond: Call the Commissions' attention to anything mentioned.

Mr. Rolston: Maybe I better read the grounds.

(Counsel now reads the motion for new trial which has been marked as Exhibit 89.)

Mr. Rolston: That is as to the judicial phase only.

Chairman Bond: Overruled and exception allowed.

(Said motion for new trial is incorporated in this record and made a part hereof.)

[fol. 883] Mr. Rolston: We have now a motion of appeal in open court we want to file.

(Said notice of appeal was marked Exhibit No. 90 for the record.)

Chairman Bond: Very well. Received.

(Whereupon the notice of appeal Exhibit No. 90, so received is incorporated in this record and made a part thereof.)

Mr. Rolston: We have a request for Your Honor, as Chairman, to make the record. We want a whole complete record of all matters.

Chairman Bond: Very well.

(Said requested order for record for appeal was marked Exhibit No. 91 and incorporated in this record and made a part hereof.)

Mr. Rolston: Then we have an application, this is the last one, for Supersedeas Bond, that is, the Commission fix the amount and terms of a suspending or supersedeas bond to suspend the operation of the Order in the judicial phase of the case. Let the record show I haven't put in the Order number because I didn't know what it was.

(Which said application was marked as Exhibit 92 and is incorporated in this record and made a part thereof.)

Mr. Green: You want that application to apply only——

Mr. Rolston: To the judicial phase of the case.

[fol. 884] Mr. Green: You want that application to apply only to the Order captioned, Peerless Oil & Gas Company versus Cities Service Gas Company, a corporation.

Mr. Rolston: I recite in here this bond is for that part of the order of the Commission purporting to order Respondent to make connection with the well of applicant and to take and purchase gas therefrom, fixing a price and terms of purchase between applicant and Respondent.

Mr. Green: That application relates only to the Order that is captioned Peerless Oil & Gas Company vs. Cities Service Gas Company, a Corporation, and not to the Order that is captioned Peerless Oil & Gas Company vs. Cities Service Gas Company, Respondent and all other purchasers.

Mr. Rolston: That is correct. We don't want to give bond to stay the legislative order for the whole field.

Mr. Green: That bond is to stay the effectiveness of the order insofar as it relates to the dispute between Peerless Oil & Gas Company vs. Cities Service Gas Company.

Mr. Rolston: To the order made by the Commission.

Chairman Bond: Did you gentlemen desire to argue the supersedeas?

Mr. Pruet: I was under the impression that the Order [fol. 885] would be effective as of Jany. 1st and entered as of that date. I didn't anticipate the matter would come up for hearing on supersedeas today,—as far as the ratable phase of the case is concerned that they want to supersede, the 1913 act doesn't provide for supersedeas at all.

Chairman Bond: The Commission has a case on trial now. We have about a hundred witnesses here. We can hear you on the supersedeas some other date.

Mr. Pruet: I would prefer that. I might want to put on some evidence myself.

Chairman Bond: The Commission will take the supersedeas under advisement.

Mr. Rolston: We have no objection to that.

Chairman Bond: You gentlemen agree on a date.

Mr. Green: Let me pick a date and advise them.

Mr. Rolston: I tale it your Honor said at the start of this you hadn't signed this Order?

Chairman Bond: No, we decided the case—we haven't signed the Order because we were going to hear the argument of counsel before we signed it. We didn't know but what you might have other corrections you wanted to make.

Mr. Rolston: As I understand, the Order as finally entered by you was with those words deleted?

Chairman Bond: Absolutely.

[fols. 886-902] Counsel read to the Commission two reports of the Commission, which, after typographical errors were corrected, were then signed by the Commission.

[fol. 903] On December 9, 1946, as hereinbefore set out, a Motion to Set Aside Findings of Fact and Conclusions of Law and substitute therefor certain Findings of Fact and Conclusions of Law in the judicial phase of said case and render judgment for respondent was filed in said cause by the Respondent, which motion was by the Commission overruled and exceptions allowed, as hereinbefore set out.

Said Motion, with all endorsements thereon, is in words and figures as follows:

[fol. 904] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION TO SET ASIDE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SUBSTITUTE THEREFOR CERTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE JUDICIAL PHASE OF SAID CASE AND RENDER JUDGMENT FOR RESPONDENT—Filed December 9, 1946

Comes now Respondent, Cities Service Gas Company, and moves the Commission to set aside, vacate and hold for naught the findings of fact and conclusions of law entered by it in the judicial phase of said case; that is, the private dispute between Applicant and Respondent, that are inconsistent and incompatible with the hereinafter requested findings of fact and conclusions of law, for the reason and upon the ground that there is no legal competent evidence to support such findings of any legal, constitutional or statutory authority of law for such conclusions of law, or judgment, order or decision by said Commission herein.

Respondent further moves the Commission to substitute [fol. 905] the following findings of fact and conclusions of law that may be inconsistent or incompatible with the findings of fact and conclusions of law found and rendered by the Commission, and upon such requested substitute findings of fact and conclusions of law render judgment for Respondent, or notwithstanding the denial of the request for substituting findings of fact and conclusions of law, to render judgment for Respondent in the judicial phase of said action; namely, the private dispute between Applicant and Respondent.

Findings of Fact

1. There existed a market price for pipeline delivered dry natural gas in the Guymon-Hugoton Pool in Texas County, Oklahoma, at the time of the purported tender or tenders of gas by Applicant to Respondent.

2. The market price and going price for dry natural gas are the same.

3. The market or going price for pipeline delivered dry natural gas in the Guymon-Hugoton Pool in Texas County,

Oklahoma at the time of the purported tender or tenders by Applicant to Respondent of its said gas was 4⅛¢ per MCF, computed on a pressure basis of 16.4 pounds absolute pressure per square inch and on a temperature base of 60° Fahrenheit.

4. The weighted average price for pipeline delivered dry natural gas in the Guymon-Hugoton Pool in Texas County, Oklahoma, at the time of the purported tender or tenders by Applicant to Respondent of its said gas was approximately 4⅛¢ per MCF computed and measured as stated [fol. 906] in Finding No. 3 hereof.

5. The average price for pipeline delivered dry natural gas in the Guymon-Hugoton Pool in Texas County, Oklahoma, at the time of the purported tender or tenders by applicant to respondent of its said gas was 4½¢ per MCF computed and measured as stated in Finding No. 3 hereof.

6. Applicant, as shown by its pleadings and evidence, tendered its gas from the well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, to Respondent at 6¢ per MCF, which amounts was in excess of the market price, going price, weighted average price and average price for pipeline delivered dry natural gas in the Guymon-Hugoton Pool in Texas County, Oklahoma.

7. Applicant's acreage in said Section 8 is not developed acreage as Applicant, as owner thereof, failed to show it was ready, willing and able to permit or to make a pipeline connection or deliver its gas to Respondent at the going price for dry natural gas in the field.

8. Respondent, by its pleadings and evidence, has offered and does now offer to take and purchase pipeline delivered dry natural gas from the well of Applicant without discrimination and upon the same terms and conditions it now purchases pipeline delivered dry natural gas from others in said pool, pursuant to the subsisting order of this Commission governing the Guymon-Hugoton Pool in Texas County, Oklahoma, and in accordance with the Common [fol. 907] Purchaser Acts of the State of Oklahoma.

9. Respondent has purchased some gas in the State of Oklahoma under special written contract with selected sell-

ers for the sole purpose of adequately supplying its existing markets with dry natural gas.

10. At the time of the tender or tenders by Applicant to Respondent of gas from its said well no price then existed in the Guymon-Hugoton Pool in Texas County, Oklahoma, for purchase of pipeline delivered dry natural gas in excess of 4½¢ per MCF, and at the time of the trial and hearing of this cause no price existed in said pool for pipeline delivered dry natural gas in excess of 5¢ per MCF and the price of 5¢ per MCF was fixed by the Commission in granting an application to Cabot Carbon Company as an emergency war measure to purchase and utilize dry natural gas in said pool for the manufacture of channel black.

11. The Act of the Legislature under which Applicant asked the Commission to take jurisdiction of the judicial dispute between Applicant and Respondent prescribes no guide or standard for the Commission to follow in fixing the price of gas and/or other terms of purchase.

12. The Commission has never at any time material to or covered by these proceedings promulgated or established any legislative order governing the price of dry natural gas or the terms of purchase thereof, including delivery, metering and measuring of dry natural gas.

[fol. 908] 13. Respondent takes title to and transports all of the gas it produces and purchases, except an inconsequential amount thereof, in the stream of gas flowing continuously without interruption from pleace of delivery and production, outside the State of Oklahoma where its principal markets are located.

14. During the hearing Applicant and Respondent voluntarily made binding arrangements for ratable taking of gas by Respondent from well of Applicant involved herein.

15. Respondent, during the time involved herein, has been and is purchasing all dry natural gas purchased by it in said pool at 4½¢ per MCF, computed and measured as stated in Finding No. 3 hereof.

Conclusions of Law

1. Respondent is not now and never has been, under the evidence and findings, engaged in the business of purchasing

dry natural gas as a common purchaser holding itself out as willing to purchase from any and all parties desiring to sell dry natural gas.

2. Applicant's well was not entitled, at the time Applicant tendered gas from such well to Respondent, to an allowable under the order of this Commission or the laws of the State of Oklahoma.

3. The evidence and findings show that the Act of the Legislature under which Applicant seeks relief in its judicial dispute between Applicant and Respondent is unconstitutional and invaiid.

[fol. 909] 4. Neither the statute under which Applicant seeks relief in the judicial dispute between Applicant and Respondent nor the Common Purchaser Acts of Oklahoma are self-executing and by reason thereof the relief requested by Applicant is premature and this Commission has no jurisdiction in law, under the findings and evidence, to grant the relief requested.

5. The Commission is not authorized to grant any legal relief to Applicant and in no event is it authorized to fix a price, under the findings and evidence, in excess of 4½¢ per MCF, computed and measured as stated in Finding No. 3 above.

6. Respondent is engaged in the interstate transportation and sale of natural gas for resale and under the jurisdiction and control of the Federal Power Commission under the Natural — Act. A sale of pipeline delivered dry natural gas in the field to an interstate transporter of natural gas is a sale in interstate commerce and it is not within the jurisdiction of this Commission to interfere with, burden or impair such commerce, and any attempt of the Commission to grant the relief herein asked, or any part thereof, would have such effect.

7. During the trial the judicial phase of this action terminated when Applicant and Respondent voluntarily made and put in evidence binding arrangements for ratably taking gas from the well of Applicant involved herein.

(Signed) Glenn W. Clark, R. E. Cullison, Joe Rolston,
[fol. 910] Jr., Attorneys for Respondent, Cities Service Gas Company.

(Endorsed on Face of this Document:) Exhibit 88-E. Weinberger, Official Court Reporter.

[File endorsement omitted.]

[fol. 911] On December 9, 1946, Respondent filed in said cause its Motion for New Trial, which was presented to the Commission and was by the Commission overruled, to which action the Respondent saved exceptions, all of which is hereinbefore set out in this record.

Said Motion for New Trial, Heretofore marked Exhibit 89, with all endorsements thereon, is in words and figures as follows:

[fol. 912] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION FOR NEW TRIAL—Filed December 9, 1946

Comes now Respondent, Cities Service Gas Company, and moves the Commission to vacate, set aside and hold for naught the decision, order, judgment, decree and final action entered and rendered herein on the 9th day of December, 1946, in the judicial phase of said cause, hearing and action; that is, that part of the order of the Commission purporting to order Respondent to make connection with the well of Applicant, and to take and purchase gas therefrom and to fix the price of gas and other terms of purchase as between Applicant and Respondent, and to grant Respondent herein a new trial for the following causes and reasons which affect materially the substantial rights of said Respondent:

1. Irregularity in the proceedings of said Commission and abuse of discretion by which Respondent was prevented from having a fair and impartial trial and hearing.

[fol. 913] 2. That the order, judgment, report, decree and/or final decision is not sustained by sufficient evidence and/or is contrary to law.

3. Error of law occurring at the trial and hearing and excepted to by the Respondent.

4. Error of the Commission in overruling the various and sundry written and oral demurrers, motions and objec-

tions, including, but not by way of limitation, the demurrer to the evidence of Applicant, Intervener and all other parties participating in said hearing and/or trial.

5. Error of the Commission in refusing to inform Respondent, per its written motion in advance of the trial of said cause, the rules of evidence and procedure that the Commission would follow at the hearing of said cause.

6. Error of the Commission in refusing to grant Respondent the right to inspect and make copy of certain material documentary evidence in the possession of Applicant, Peerless Oil & Gas Company.

7. Error of the Commission in overruling motion and request of Respondent, at the inception of the hearing of the cause, to grant Respondent a separate trial and hearing on the judicial phase of said case; that is, that part of the order of the Commission purporting to order Respondent to make connection with the well of Applicant and to take and purchase gas therefrom and to fix the price of gas and other terms of purchase as between Applicant and Respondent, the same being a private dispute solely between [fols. 914-915] Applicant and Respondent, from the legislative phase of said cause; that is, that part dealing with the promulgation of the legislative rule or order fixing the price of gas generally for the Guymon-Hugoton Pool in Texas County, Oklahoma, same not being a private dispute between individual parties but a matter of public interest generally.

Dated this 9th day of December, 1946.

(Signed) Glen W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company.

[File endorsement omitted.]

[fol. 916] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL—Filed December 9, 1946

Comes now Cities Service Gas Company, Respondent herein, and files herewith, in open court, notice of its inten-

tion to appeal to the Supreme Court of the State of Oklahoma from the findings of fact, conclusions of law, reasons of the Commission for entering its orders herein, and from the orders, judgments, decrees, rules, regulations, and final action of the Commission herein on the 9th day of December, 1946, in the judicial phase of said hearing, cause and action in favor of Applicant, Peerless Oil & Gas Company, and against Respondent, Cities Service Gas Company, and also in the Legislative phase of said hearing cause and action in favor of Applicant, Intervener, and all other persons interested in the promulgation of said legislative rule, and Respondent does hereby request that this notice be entered on the trial docket of the Commission as provided by law in such cases.

Dated this 9th day of December, 1946.

[fol. 917] (Signed) Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Respondent, Cities Service Gas Company.

[File endorsement omitted.]

[fols. 918-921] Thereafter, and on December 9, 1946, the Respondent filed in said cause its Requested Order for Record for Appeal, which document had been previously presented to the Commission in open Court and marked Exhibit 91, and which, with all endorsements thereon, is as follows:

[fols. 922-924] Note: Counsel stipulate that supersedeas was properly requested and granted and supersedeas bonds filed and Orders 19514 and 19515 of the Corporation Commission of Oklahoma were stayed pending appeal to the Supreme Court of Oklahoma. Proceedings thereon omitted in printing.

[fol. 925] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

Stipulation as to Exhibits—Filed December 20, 1946

This stipulation entered into by and between Peerless Oil & Gas Company, a corporation, applicant herein, Cities

Service Gas Company, a corporation, respondent herein and the Commissioners of the Land Office of the State of Oklahoma, Intervenor, for the purpose of shortening the record and transcript in Cause CD No. 1054, the parties hereto agree that the following exhibits might be deleted from the record for the reasons set out herein:

Exhibit No. 13
Exhibit No. 14
Exhibit No. 15
Exhibit No. 16

The parties agree that Exhibits Numbers 11 and 12 were [fol. 926] mailed and received in the course of registered mail by the Cities Service Gas Company and the Corporation Commission of Oklahoma and that there is no reason to show in the record the Peerless Oil & Gas Company registration receipts marked Exhibits Numbers 15 and 16 and the signed return receipts marked Exhibits Numbers 13 and 14.

It is further stipulated and agreed that letters written by applicant to respondent and shown as Exhibits Numbers 17 and 20 were received by the Respondent in the course of registered mail and that there is no necessity of showing in the record Peerless Oil & Gas Company's registered receipt, Exhibit No. 18, and Peerless Oil & Gas Company's return receipt, Exhibit No. 19.

It is further stipulated and agreed that the Corporation Commission received a letter, a copy of which is identified as Exhibit No. 21, which has attached to it a copy of a letter written by the Applicant to the Respondent and identified as Exhibit No. 22, and that there is no necessity of showing in the record, the Peerless Oil & Gas Company's registration receipt, identified as Exhibit No. 23, or the Peerless Oil & Gas Company's return receipt identified in the record as Exhibit No. 20.

It is further stipulated and agreed that all of Exhibit No. 46, be deleted from the record, which exhibit is a copy of the operating regulations governing the production of oil and gas, issued by the Department of the Interior, revised and approved July 1st, 1926, except all of Section 4 of said Exhibit shall be shown in the record.

[fols. 927-953] It is further stipulated and agreed that the red marks on Exhibit No. 57, might be deleted from the record.

It is further stipulated and agreed that the two mailing registration receipts, and made a part of Exhibit No. 84, may be deleted from the record.

It is further stipulated and agreed that pursuant to the request of Applicant, in cross examination of the witness Rowland, Respondent has furnished to the Commission a statement showing the direct sales of 100,000 MCF or over, by average sales, price, brackets, and that the statement furnished by the witness Rowland may go into the record as Exhibit No. 93.

This stipulation signed this the 17th day of December, 1946.

Peerless Oil and Gas Company, by (S.) Earl Pruet, Its Attorney; Texas County Land & Royalty Owners Association, by (S.) Earl Pruet, Its Attorney; Cities Service Gas Company, a Corporation, by (S.) R. E. Cullison, Its Attorney; State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, by (S.) W. D. McBee, Its Attorney.

[File endorsement omitted.]

[fol. 954] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

STIPULATION CONCERNING OBJECTIONS—Filed January 16, 1947

It is hereby stipulated between the parties to the above proceedings that at the inception of the trial and hearing the following agreement, to avoid unnecessary encumbrance of the record, was entered into between the parties, in open court, with approval of the Commission and open announcement thereof by the Chairman, and the record should be corrected to show such agreement, as follows:

(a) Where record shows a party to the proceedings has interposed an objection to evidence, which objection is not

fully completed because of interruptions or reasons therefor are not shown and the objection is not sustained, such objection shall be deemed to have been properly and appropriately made, both as to form and reasons, overruled and exceptions allowed.

(b) Where record shows that a party to the proceedings has interposed an objection to certain evidence which is overruled and exceptions allowed, such objection, ruling and exception shall be deemed to *su*pply to all evidence of like general character without the necessity of further objection, ruling or exception.

[fol. 955] (c) Exceptions are granted to each party to the proceedings on all adverse rulings of the Commission.

Earl Pruet, Attorney for Applicant; R. E. Cullison and Joe Rolston, Jr., Attorneys for Respondent; Floyd Green, Conservation Attorney.

[File endorsement omitted.]

[fols. 956-960] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. CD-1054

32994

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent,

STATE OF OKLAHOMA on Relation of the Commissioners of the Land Office of the State of Oklahoma, Intervenor

CERTIFICATE

I, Reford Bond, Chairman of the Corporation Commission of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct transcript of the record made before the Corporation Commission in Cause CD 1054 above entitled. I further certify that the record contains all of the pleadings, evidence taken or introduced,

offered or considered by the Commission, together with all objections thereto, all motions, exceptions, rulings and Orders of the Commission made in said cause, and all of the facts upon which Order No. 19514 and Order No. 19515 was based, together with copies of said Orders. The record in this case consists of two volumes,—one containing the pleadings and testimony and the other containing the exhibits offered and received in the case.

Given under may hand and the seal of the Corporation Commission of the State of Oklahoma, this 21st day of January, A. D. 1947.

Reford Bond, Chairman.

Attest: Tom McMurray, Secretary. (Seal.)

[fol. 961] [File endorsement omitted]

Original of Exhibit Binder

Case CD 1054

Corporation Commission, State of Oklahoma

This is part of record in Supreme Court No. 32,994

Before the Corporation Commission of the State of Oklahoma

CD No. 1054

Peerless Oil and Gas Company, a Corporation, Applicant,

vs.

Cities Service Gas Company, a Corporation, Respondent

Supreme Court Number ——

This Binder contains all Exhibits offered and received at the trial of the above entitled cause, and said Exhibits are a part of the Record for Appeal in said cause.

[fol. 962] Exhibit 1

Exhibit 1, consists of a copy of the Application in cause CD 1054 before the Corporation Commission of

the State of Oklahoma, attached to which and as a part of said Exhibit 1 are the following:

(a) Copy of letter addressed to the Cities Service Gas Company, dated May 7, 1945,

(b) Copy of letter addressed to Peerless Oil & Gas Company, dated June 14, 1945,

(c) Copy of the Order of the Commission setting the Cause for hearing on November 26, 1945,

(d) Copy of Notice of Hearing of said Application, issued by the Corporation Commission, dated October 18th, 1945,

(e) Certificate of Walker T. Pound, Conservation Officer, that he received a copy of said Application, order Setting Cause for Hearing, and Notice of said hearing, and that on November 2nd, 1945 he served same by delivering a true and correct copy thereof to Ben A. Ames and filed proof of service with the Secretary of the Corporation Commission.

As the above mentioned Application and each of the documents attached thereto are copied in full in this record and duly indexed, same are not again copied at this point but reference is made to the index at the beginning of this record.

[fol. 963] Exhibit 2, is the Proof of Publication of Notice to all Operators, Purchasers and Takers of Natural Gas in the State of Oklahoma and particularly in the Guymon-Hugoton Field, which Proof of Publication has heretofore been copied in full as a part of the files in the office of the Secretary of the Corporation Commission and duly indexed, therefore, to avoid duplication and encumbering of this record the said Exhibit 2 is not again copied at this point, but reference is made to said index.

Exhibit 3, is the Affidavit of Publication of the Notice mentioned in Exhibit 2. As this Affidavit of Publication has been previously copied in this record as part of the files of the Secretary and has been duly indexed, to avoid encumbering the record said Exhibit 3 is not again copied here but reference is made to said index.

[fols. 964-965] Exhibit 4, is the Motion of Respondent Cities Service Gas to advise Respondent what rules of

procedure and practice, if any, would be applied in the hearing and determination of the issues between Applicant and Respondent. As this Motion has been heretofore copied in full herein, and indexed, to avoid duplication said Motion is not here copied but reference is made to said index.

EXHIBIT 5 is the Answer of Respondent, Cities Service Gas Company, to the Application herein, and, as such Answer has been heretofore copied herein in full and has been indexed the same is not here copied but reference is made to said index.

[fol. 966] EXHIBIT 7

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 817

Order No. 16377

In the Matter of the Application of J. J. O'LOUGHLIN, Conservation Officer, for Rules and Regulations Governing the Production of Natural Gas, Fixing the Market Demand, and Providing for Ratable Taking Thereof, in the Hugoton Field, in Texas County, Oklahoma.

REPORT OF THE COMMISSION.

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 29th day of September, 1942, at 10 o'clock, A. M., upon the application filed by the Conservation Officer and pursuant to an order of the Commission setting the same for hearing and notice published according to law; at which time the Conservation Officer appeared in person and by the Conservation Attorney, and various operators, producers, and purchasers of gas, and others interested in the Hugoton Gas Field appeared; and the Commission, having heard the testimony, continued the cause for further hearing on the 29th day of October, 1942, at 10 o'clock A. M. at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers, and

purchasers of gas and other interested persons appeared, and various statements having been made and additional [fol. 967] testimony adduced, the Commission closed the case and took the matter under advisement. Thereafter the case was reopened and notice was given by publication as required by law, and same came on for hearing before the Commission on the 16th day of April, 1943, at 10 o'clock, A. M., and additional evidence was heard, and the Commission closed the case and again took the matter under advisement.

Now, on this 5th day of May, 1943, the Commission, having considered all of the testimony taken at all of said hearings, and being fully advised in the matter, finds as follows:

Findings

1. That notice by publication of the filing of the application herein the time and place of the hearings thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That there exists in Texas County, Oklahoma a large gas field known as the Hugoton Field, which extends from the Kansas line on the north to the Texas line on the south, and approximately forty miles east and west; that said field extends north into the State of Kansas, and at least a short distance south into the State of Texas, that the probable producing area of said field in the State of Okla- [fol. 968] homa covers most of Texas County, but the exact boundaries and extent thereof have not been determined with certainty and cannot be until additional wells have been drilled.

3. That the first gas well in said area was drilled in 1922, but the development of the field has been very slow owing to lack of market; that 55 wells have been drilled in said field, which are owned by the following companies Republic Natural Gas Company, Cities Service Gas Company, Panhandle Eastern Pipe Line Company, Cabot Carbon Companies, Peerless Oil and Gas Company, Southwestern Public

Service Company, Hagy, Harrington and Marsh, Allison and Sturdevant, and Home Development Company; that many of said wells have never had a pipeline connection and have never sold any gas; that some thereof are supplying gas to the General Atlas Carbon Company for use in the manufacture of a product commonly called carbon black, and to supply the City of Guymon and other small municipalities in the vicinity of said Hugoton Field; that a very small part of the gas is being taken by the Panhandle Eastern Pipe Line Company and shipped to markets outside of the State of Oklahoma.

4. That the production from the wells owned by the Republic Natural Gas Company is being transported by that company through its pipelines to a common point near Hugoton, Kansas, and is there being sold to the Northern Natural Gas Company and shipped to consumers prin-
[fol. 969] cipally in the States of Iowa and Minnesota.

5. That there appears to be no uniform price for gas in said area; that General Atlas Carbon Company is paying on the basis of two cents and Republic Natural Gas Company is paying on the basis of five cents per thousand cubic feet at the well to the royalty owners; that Republic Natural Gas Company *Gas Company* is selling its gas under a contract with Northern Natural Gas Company in Kansas at six cents per thousand cubic feet.

6. That the common source of supply of gas in said field is found at approximately 2600 to 2900 feet, and the average thickness of the producing formation is 40 to 45 feet; that there appear to be several separate horizons, although the evidence discloses that these are only breaks in the formation and that the whole producing formation constitutes one common source of supply; that the original shut-in pressure of said wells is approximately 435 pounds per square inch, and there has been very little decline in pressure since the first well was brought on to production.

7. That from present available information it appears that the Hugoton Gas Field is one of the largest and most important gas fields in the State of Oklahoma, with total reserves of approximately nine trillion cubic feet in that state.

8. That there are several pipelines extending from the Texas Panhandle across Texas County and into the State [fol. 970] of Kansas, which are not connected with any of the producing gas wells in Oklahoma; that most of the gas which is being consumed from the general area in which the Hugoton Field is located is being produced from that part of the Hugoton Field located in Kansas or from the Texas Panhandle, although the gas produced in Texas may be almost entirely from a different common source of supply than that in Texas County.

9. That pressure differentials exist to some extent between the wells and leases in said field, which shows that there is some migration of gas, and that unless action is taken by this Commission these differentials will increase and considerable inequities will be caused by drainage, and waste may result. It is a matter of common knowledge that gas in a formation migrates toward the wells that are on production and that drainage thus caused, which is not equalized by counter-drainage from different properties, results in disproportionate production by the wells on the respective properties.

10. That from production gauges made in said field it appears that the daily potential capacity of the individual wells varies from 4,000,000 to 50,000,000 cubic feet; that the Commission has not heretofore adopted a uniform method for determining the natural flow of the wells, and therefore there is no standard which the producers and purchasers in said field can apply to determine whether the gas is being taken ratably, as provided by the laws of the State of Oklahoma and the rules and regulations of the Corporation Commission.

[fol. 971] 11. That the present market demand from said field is approximately 24,000,000 cubic feet per day, and the capacity of the wells to produce greatly exceeds that demand, even though the wells are restricted to twenty-five per cent of their capacity.

12. That one well completed in said formation will adequately drain 640 acres without waste, and will produce all of the gas that originally underlaid that area; that all of the [fol. 972] wells heretofore drilled in said field have been on a 640-acre spacing pattern, that is, there is only one well in

a section consisting of 640 acres according to the United States Governmental Survey; that in order to establish a uniform pattern for drilling wells, each operator should divide his acreage into units, which should not exceed 640 acres and be wholly within a section; provided that in the drilling of new wells, only one well should be drilled in one section, but in event more than one well is drilled, the allowable gas production should be limited and restricted as hereinafter set out in this order; and provided further, each operator should file with the Corporation Commission on a verified statement of the description and amount of acreage in each unit owned by him.

13. (a) As in gas fields generally, there are in this field, within the units to be established by this order, many separately owned tracts of such small size that the cost of drilling a well thereon would be too high to expect returns from the production and sale of gas therefrom sufficient to warrant such drilling if the owner is limited in production to the amount of gas which the statute allows to be produced from such tracts. Unless unitization of tracts within possible units is encouraged and royalty interests protected by an apportionment to the separate tracts of the gas produced through one well on a unit, the property rights of the lessees of such tracts and their royalty owners cannot be adequately protected. In such cases the one well will drain the gas, or an amount equal to the gas, under the tracts within the unit, and thereby the property rights and equities of all concerned as prescribed by statute will be safeguarded and protected.

[fol. 973] (b) That all owners, operators, and producers should be encouraged to communitize all of the leases in a section as divided by the United States Governmental Survey for the reasons stated in (a) above, and in order that there may be uniform development of said field; that whenever the acreage, or any part or parts thereof, covered by two or more leases has been consolidated by the owner or owners to form an acreage unit under the provisions of this order, the consolidated unit should be considered as a single developed lease, and all gas produced from the well thereon should be distributed to and between the separate tracts within the unit in the ratio that the acreage contained in such separate tracts bears to the total acreage of the unit, and the royalty accruing by reason of said production should be

distributed proportionately and paid in accordance with said ratio.

14. That in the years 1913 and 1915 Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas, prohibiting the waste thereof, and providing that the Corporation Commission shall give due regard to the acreage drained by each well in prorating gas production so as to prevent any securing of an unfair proportion of the gas from the formation, and authorizing and directing the Corporation Commission to promulgate rules and regulations for the determination of the natural flow of wells and the taking of natural gas from the common source of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom, and to give to each owner or lessee an opportunity to produce all of the natural gas located in its [fol. 974] original state under the property owned by him, and to enforce the laws; that in the years 1933 and 1935 Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

15. That pursuant to said statutes the Corporation Commission in the year 1916 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this state; that same have been amended in only a few particulars since that time; that said rules and regulations do not establish a method for determining the natural flow of the wells and do not take into consideration the acreage drained by said wells, and are generally insufficient to carry out the objects of the laws of the State of Oklahoma as to gas production from said Hugoton Field.

16. That in allocating the gas production from said field, only developed acreage should be considered as developed acreage is hereinafter defined in this order.

17. That in order to carry out the laws of the State of Oklahoma and to perform the duties and obligations placed upon the Corporation Commission, it is necessary to amend

the general rules and regulations insofar as they affect the Hugoton Field and to adopt and promulgate additional rules and regulation for the production of gas from said field in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing any unfair proportion of [fol. 975] the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

18. That in order to accomplish as nearly as possible the objects set out in the preceding paragraph, it is necessary to adopt a formula that will enable each well to currently produce its ratable share of the gas and to ultimately produce the approximate amount originally underlying said lease.

19. That in such formula many factors should be considered, such as natural flow, acreage, pressures, and porosity, permeability, and thickness of the formation, of which acreage is one of the most important; that in determining the ability of a well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered; that the formula hereinafter set out in this order, which takes into consideration acreage and deliverability, and gives due value to both, should be established by this Commission, so as to carry out the purposes of the laws of the State of Oklahoma.

20. That two allowables periods for each year should be established, one from April 1 to September 30, inclusive, and the other from October 1 to March 31, inclusive, with the idea of allowing purchasers to adjust their takes over long periods, and so that one report and order should cover the fall and winter months and the other the spring and summer months, thus dividing the periods of high demand from those of lower demand.

[fol. 976] 21. That the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in production of gas from the Hugoton Field, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a

greater recovery, prevent drainage, and encourage future development.

Declaration of Policy

It Is the Intention, Purpose, and Policy of the Corporation Commission of the State of Oklahoma in Issuing This Order to Promulgate Rules and Regulations as Authorized and Directed by the Laws of the State of Oklahoma Governing Production of Natural Gas, Providing a Uniform Method of Determining the Natural Flow of Wells and for Ratable Taking of Gas, in Order to Protect the Interests of the Public and All Parties Interested Therein, and to Give Each Operator an Opportunity to Produce Currently His Proportionate Part of the Gas and Ultimately to Produce Approximately the Amount of Gas Originally Underlying the Surface of the Land Owned by Him, and to Prevent Waste.

It Is Not the Intention to Limit or Restrict the Market Demand for Gas in the Hugoton Field, But Only to Prorate the Same Equitably and Fairly Among the Producers.

[fol. 977] ORDER

It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order *sah*ll be effective as to the Hugoton Field, located in Texas County, Oklahoma, the productive area of which covers a large part of Texas County and Extends north into the State of Kansas and perhaps south into the State of Texas, but the boundaries of which cannot be determined with certainty until additional wells are drilled; that all wells now producing therefrom are producing from the same common source of supply.

2. Each operator shall divide his acreage into acreage, which shall be considered by the Commission as the acreage drained by each well in allocating gas so as to protect the interests of all parties and prevent drainage. Each operator shall file a verified statement with the Oil and Gas Conservation Department as to the acreage contained in each unit owned, describing the acreage and showing the acreage that has been developed, and as to undeveloped tracts a like statement shall be filed prior to production

the general rules and regulations insofar as they affect the Hugoton Field and to adopt and promulgate additional rules and regulation for the production of gas from said field in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing any unfair proportion of [fol. 975] the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

18. That in order to accomplish as nearly as possible the objects set out in the preceding paragraph, it is necessary to adopt a formula that will enable each well to currently produce its ratable share of the gas and to ultimately produce the approximate amount originally underlying said lease.

19. That in such formula many factors should be considered, such as natural flow, acreage, pressures, and porosity, permeability, and thickness of the formation, of which acreage is one of the most important; that in determining the ability of a well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered; that the formula hereinafter set out in this order, which takes into consideration acreage and deliverability, and gives due value to both, should be established by this Commission, so as to carry out the purposes of the laws of the State of Oklahoma.

20. That two allowables periods for each year should be established, one from April 1 to September 30, inclusive, and the other from October 1 to March 31, inclusive, with the idea of allowing purchasers to adjust their takes over long periods, and so that one report and order should cover the fall and winter months and the other the spring and summer months, thus dividing the periods of high demand from those of lower demand.

[fol. 976] 21. That the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in production of gas from the Hugoton Field, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a

inclusive, and the other from October 1 to March 31, inclusive.

6. A formula shall be, and is hereby, adopted for the purpose of allocating the production of gas among the wells in the field, which formula shall consider acreage and deliverability, as herein defined in this order.

7. Deliverability of a well is the ability of the well to deliver gas against eighty per cent (80%) of the average field pressure. The deliverability factor of each well shall be determined by test, consisting of a measurement of the rate at which the well is capable of producing gas and delivering it against a back pressure equal to eighty per cent of the average closed in wellhead pressure of the wells in the field expressed in pounds per square inch gauge, and designated herein as the deliverab-lity standard pressure. During the test the flow of the well shall be fed into a pipeline, the pressure in which is maintained at a point lower than the deliverability standard pressure, and the well shall be choked to maintain a back pressure on the well, determined by the dead weight gauge, equal to the deliverability standard pressure until the rate of flow of gas from the well measured by approved meter varies not more than one per cent in one hour; provided that, the rate of flow so measured at the end of the hourly period, expressed in MCF per day, shall constitute the deliverability factor of the well.

8. The deliverability of each well in said field shall be determined as soon as practicable after the effective date of [fol. 980] this order by the Conservation Department of the Corporation Commission, and thereafter shall be determined at least once each year between May 1 and August 15, unless otherwise ordered by the Commission, or at such times as may be agreed upon by all the operators in the field, with the approval of the Conservation Officer and the Corporation Commission.

9. In order to determine the amount of gas that should be produced from each well for any allowable period, a field proration factor shall be determined by dividing the total anticipated production from the field for such period by the sum of the product of deliverability times the acreage factor for all the wells in the field; then multiply the field proration factor by the product of deliverability times the

acreage factor for each well; the result reached by this calculation shall constitute the well's anticipated allowable in cubic feet for such proration period; provided, however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production, as above set out, then the Conservation Department shall immediately revise the allowables for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of acres in any unit.

10. If at the end of any allowable period there is an overproduction or underproduction of any well, same shall be carried as a charge against or a credit in favor of such well, and subtracted from or added to, as the case may be, the allowable for such well for the next allowable period; provided that, any overproduction from any well during any [fol. 981] allowable period which is not equalized by ratable overages from all other wells in the field, or which is not compensated for in the allowables fixed for other wells in the field for the next ensuing allowable period, or not otherwise made up within one year after the allowable period in which it occurred, shall constitute illegal overproduction from such well, and such well, shall be shut in until such overproduction is made up.

11. Seventy-two (72) hour shut-in pressure tests of the wells in the field shall be taken by or under the supervision of the Conservation Officer. Such tests shall be taken at least once each year and at approximately the same time as the deliverability tests above prescribed; provided that, in taking said deliverability and pressure tests, the Conservation Officer shall give written notice to every operator and producer in the field sufficient to give them an opportunity to have a representative present. A written report of the deliverability and pressure tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Conservation Department upon forms furnished and approved by the Corporation Commission. These reports shall be filed as soon as possible after taking of the tests.

12. The Conservation Officer shall prepare production schedules in accordance with the provisions of this order

and submit the same to the Corporation Commission for its approval, and upon approval thereof said schedules shall take effect and the Conservation Officer shall promptly furnish to each operator and purchaser in the field a copy thereof.

[fol. 982] 13. In event the pressure of a well drops twenty-five (25) pounds below the average closed-in well-head pressure of all the wells in the field, such well shall be shut-in and not permitted to produce until the pressure of said well shall build up to within twenty (20) pounds of the average closed-in well-head pressure of all the wells in the field.

14. All purchasers of gas in the field shall comply with the common purchaser provisions of the statute (Section 5, Chapter 197, Session Laws of 1915; Title 52, Section 240, Oklahoma Statutes 1941) by purchasing all the gas that may be reasonably reached by their trunk or gathering lines without discrimination in favor of one producer as against another, and they shall not discriminate in favor of their own production, and shall take from all wells, which they can so reach by their own line or lines provided by the well owners, ratably in accordance with the ratable allocations to wells established by this order. If the Corporation Commission, or the Conservation Officer with the approval of the Corporation Commission, finds that it is impossible for an operator to offer or for any purchaser to make a connection to any pipeline or other market outlet, then such well shall not be considered in determining the allowable production of the other wells in the field; and in making the allocation such well shall not be taken into consideration; provided that, if a connection to a pipeline or other market outlet is made during any allocation period, the well shall be given its allowable for the remainder of said period. If any operator of any well shall refuse to produce the amount of gas allocated to said well by the Commission, or if the operator is unable to produce the entire amount by reason of insufficient con-
[fol. 983] nections, then the amount which such operator refuses to produce or is unable to produce by reason of insufficient connections shall be ratably distributed among the other wells in the field in order that the market may at all times be fully supplied; and if for a period of one year

any operator refuses, or by reason of insufficient connections is unable, to produce his allowable, the underproduction created thereby shall be canceled, unless otherwise ordered by the Commission.

15. All wells shall be equipped with meters of approved type, and the amount of gas from each well shall be accurately measured; and the operator or purchaser of gas shall make a written report to the Conservation Officer each month of the amount of gas taken from each well during the preceding month.

16. The Commission shall hold regular semi-annual hearings in the months of March and September of each year, and at such other times as the Commission may order, after due and proper notice to all producers and purchasers, for the purpose of determining the anticipated production for the ensuing allowable period, at or prior to which time each producer and purchaser shall notify the Conservation Department of the volume of gas necessary to meet his requirements for each month in the ensuing allowable period from said field; and the Commission shall at such hearing hear testimony as to the demand and any and all other pertinent matters, and make any orders necessary to carry out the provisions of this order and prorate the gas production from the Hugoton Field among the producers and royalty owners in such manner that each will receive cur- [fol. 984] rently his proportionate part thereof and ultimately recover the approximate amount of gas originally underlying his land, and to prevent waste in the production of gas therefrom; and upon the testimony the Commission shall authorize the issuance of schedules of production allowables for the wells in the field during said period.

17. This order shall be effective as of July 1, 1943, at 7 o'clock A. M.

18. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, or altering this order, if at any further hearing in this cause, or from any other evidence adduced before the Commission it appears that such modification should be made.

19. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provisions, section, para-

graph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 5th day of May, 1943.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman. (Seal.)

Attest: Carl B. Mitchell, Secretary.

[fol. 985] EXHIBIT 8

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 861

Order No. 17410

In the Matter of the Application of WALKER T. POUND, Conservation Officer, for Rules and Regulations Governing the Ratable Taking of Gas and Allocating the Production in the Hugoton Gas Field in Texas County, Oklahoma

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, originally on the 1st day of October, 1943, at 10 o'clock, A. M., upon the application filed by the Conservation Officer and pursuant to an order of the Commission setting the same for hearing and notice published as required by law; at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers and purchasers of gas, and others interested in the Hugoton Gas Field, were present; whereupon evidence was presented, which the Commission considered as supplementary to evidence introduced in the various hearings in Cause

CD No. 817 pursuant to which Order No. 16377 was issued on the 5th day of May, 1943; and the Commission closed the cause and took the matter under advisement.

Thereafter this cause was reopened upon an amended application filed by the Conservation Officer, and pursuant to an order of the Commission setting the same for hearing and notice published according to law, came on for hearing before the Commission on the 27th day of July, 1944, at 1:30 o'clock, P. M. at which time the Conservation Officer [fol. 986] and Conservation Attorney appeared, and various operators, producers, and purchasers of gas appeared, and others interested in the Hugoton Field were present, whereupon additional testimony was heared, and all of the testimony introduced in the hearings heretofore held was taken into consideration; and the Commission closed the cause and again took the matter under advisement.

Now, on this 27th day of December, 1944, the Commission, having considered all of the testimony taken in all of the hearings on the Hugoton Field, and being otherwise fully advised in the premises, finds as follows:

Findings

1. That notice by publication of the filing of the amended application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That heretofore and on the 5th day of May, 1943, the Commission promulgated its Order No. 16377 in Cause CD No. 817, establishing rules and regulations governing the production of natural gas in the Hugoton Field in order to prevent waste, provide for ratable taking, and fixing allowables of wells so that production and distribution in said field would be fair and equitable; that said Order No. 16377 should be rescinded and superseded by this order.

[fol. 987] 3. That there exists in Texas County, Oklahoma, a large gas field known as the Hugoton Field, which extends from the Kansas Line on the north to the Texas line on

the south, and approximately forty miles east and west; that said field extends north into the State of Kansas, and at least a short distance south into the State of Texas; that the probable productive area in said field in the State of Oklahoma covers most of Texas County, but the exact boundaries and extent thereof cannot be determined with certainty until additional wells are drilled.

4. That the first gas well in said area was drilled in 1922, but development of the field has been very slow owing to lack of market until about the time of the issuance of said Order No. 16377; that at said time only 55 wells had been drilled, many of which had no pipeline connection or other market outlet, and had never sold any gas; that at the present time there are more than 100 wells which are principally owned by the following companies: Republic Natural Gas Company, Cities Service Gas Company, Wilcox Oil & Gas Company, Cabot Carbon Companies, Peerless Oil and Gas Company, Southwestern Public Service Company, Hagy, Harrington and Marsh, Allison and Sturdevant, Home Development Company, and Phillips Petroleum Company, and perhaps others; that Skelly Oil Company, Panhandle Eastern Pipe Line Company as well as all the other companies above named and perhaps others all own large undeveloped acreage in said field; that many wells are being drilled in the field; that some of the wells have not yet had a pipeline connection and have never sold any gas up to this time; that some of said wells are supplying gas to the General Atlas Carbon Company for use in the [fol. 988] manufacture of a product commonly called furnace carbon black, and to supply the City of Guymon and other small municipalities in that vicinity; that a small part of the gas is being taken by the Panhandle Eastern Pipe Line Company and shipped to markets outside of the State of Oklahoma; that Cities Service Gas Company has a large pipeline extending from the field to Blackwell, Oklahoma, where it connects with other pipelines belonging to it and distributes gas in Oklahoma and outside of the State; that Republic Natural Gas Company is producing gas from its wells and transporting the same by its pipeline to a common point near Hugoton, Kansas, where it is sold to the Northern Natural Gas Company and shipped to consumers principally in the States of Iowa and Minnesota,

and said Republic Natural Gas Company is also selling gas to Cities Service and has a connection to its pipeline.

5. That there appears to be no uniform price for gas in said area; that some of the purchasers were paying two cents at the time of the original hearing in this cause and there is no evidence to show that this price has been changed; that other companies, such as Republic Natural Gas Company, are paying on the basis of five cents per thousand cubic feet at the well to the royalty owners, and Republic is selling its gas under a contract with Northern Natural Gas Company in Kansas at six cents per thousand; that the price paid by Cities Service Gas Company is not shown in the record.

6. That the common source of supply of gas in said field is found at approximately 2600 to 2900 feet, and the average thickness of the producing formation is 40 to [fol. 989] 45 feet; that there appear to be several separate horizons, although the evidence discloses that these are only breaks in the formation and the whole producing formation constitutes one common source of supply; that the original shut-in pressure of said wells is approximately 450 pounds per square inch, and there has been some decline in pressure since the first well was brought on to production.

7. That from present available information it appears that the Hugoton Gas Field is one of the largest and most important gas fields in the State of Oklahoma, with total reserves of approximately nine trillion cubic feet.

8. That there are several pipelines extending from the Texas Panhandle across Texas County and into the State of Kansas, which are not connected with any of the producing gas wells in Oklahoma; that a large part of the gas which is being consumed from that general area in which the Hugoton Field is located is being produced from that part of the Hugoton Field located in Kansas or from the Texas Panhandle, although much of the gas produced in the Texas Panhandle may be from a different common source of supply than that in Texas County.

9. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been

produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage and waste will result. It is of common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pres- [fol. 990] sure, and that drainage thus caused, which is not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

10. That from production gauges made in said field it appears that the daily potential capacity of the individual wells varies from 4,000,000 to 50,000,000 cubic feet; that the Commission in Order No. 16377, adopted a method for determining the natural flow of wells, which was called deliverability; that since that time deliverability tests have been made on many of the wells in said field, but said tests were not made in exact accordance with said Order No. 16377, but were make in accordance with the provision of this order as hereinafter specifically set out, and that there is now being taken tests made as specifically provided for herein.

11. That the full production of gas from wells in said field is greatly in excess of the market demand and of the transportation and marketing facilities.

12. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount [fol. 991] of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural

gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein, and wells located thereon; that in the years 1933 and 1935 the legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make an- promulgate rules and regulations for the prevention of such waste.

13. That pursuant to said statutes the Corporation Commission in the year 1916 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this state, and have been amended in only a few particulars since that time; that said rules and regulations do not establish a method for determ-ing the natural flow of the wells and do not take into consideration the acreage drained by said wells, and are generally insufficient to carry out the objects of the laws of the State of Oklahoma as to gas production from said Hugoton Field.

14. That it is necessary to amend the general rules and regulations and adopt and promulgate additional rules for the production of gas from the Hugoton Field in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to [fol. 992] prevent any lessee from securing an unfair proportion of the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

15. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as natural flow, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and natural flow are the most important, that in determining the ability of a well to put gas into a pipe-

line against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered.

16. That it appears that one well in said field will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the governmental survey, and there is no such section that has more than one well, but the acreage communitized for the drilling of such wells has not been in all instances all within one section, nor as the wells heretofore drilled all located in the approximate center of a section; that since the promulgation of Order No. 16377 all wells have been drilled on communitized leases entirely within one section, according to the governmental survey, with the well in the approximate center thereof; that except as otherwise specifically provided all units should contain not to ex- [fol. 993] ceed 640 acres all within one section as determined by the United States Governmental Survey and each well should be located as nearly as practicable in the center of a unit, unless otherwise specifically ordered by the Commission; that the acreage factor for the purposes of the allocation formula should be not to exceed 640 acres all within one governmental section with the well in the approximate center thereof unless otherwise specifically order by the Commission.

17. That the deliverability, hereinafter set out in this order, which takes into consideration the natural flow of wells, porosity, permeability, pressures, thickness of formation, and other factors, should be adopted in making allocations to wells in the field.

18. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interest-d in said common source of supply and to give to each producer and owne- an opportunity to produce currently his proportionate part of the gas taken from said field, and ultimately the approximate amount of gas originally underlying his land.

19. That in the Hugoton Field, as in gas fields generally, there exist many small and separately owned tracts on

which it would not be practical *to* profitable to drill, and the operators, lessees, and royalty owners should be encouraged to communitize said tracts into units as described in this order, and production should be divided among [fol. 994] those interested in the proportion that the acreage is owned; provided that, if the owners in any tract are unable to agree upon a proper distribution, the Commission should determine the same and authorize the production so as to carry out the intent of the laws of the State of Oklahoma.

20. That in determining allocations in said field, only developed acreage should be considered; and developed acreage shall mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to make a pipeline connection or deliver his gas to other market at the going price for gas in the field.

21. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the kind of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform the Commission *any* hold hearings in addition to those herein mentioned at any time it deems same advisable.

[fol. 995] 22. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period, and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

23. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Hugoton Field, to prevent waste protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage, and encourage future development.

[fol. 996] DECLARATION OF POLICY

It Is the Intention, Purpose, and Policy of the Corporation Commission of the State of Oklahoma in Issuing This Order to Promulgate Rules and Regulations as Authorized and Directed by the Laws of the State of Oklahoma Governing Production of Natural Gas in Order to Prevent Waste, Providing a Uniform Method of Determining the Natural Flow of Wells and for Ratable Taking of Gas, in Order to Protect the Interes- of the Public and All Parties Interested Therein, and to Give Each Operator an Opportunity to Produce Currently His Proportionate Part of the Gas and Ultimately to Produce Approximately the Amount of Gas Originally Underlying the Surface of the Land Owned by Him.

It Is Not the Intention to Limit or Restrict the Market Demand for Gas in the Hugoton Field, But Only to Restrict Production to Market Demand and Prorate Production Equitably and Fairly Among the Producers and Owners.

It Is Further the Intention of the Commission That That Portion of the Hugoton Field in the State of Oklahoma, Be Hereafter Referred to as the Guymon Hugoton Field.

ORDER

It Is Therefore Ordered by the Corporation Commission of the State ~~of Okla~~homa as follows:

1. This order shall supersede Order No. 16377, heretofore issued by the Commission, and shall be effective as to the drilling and production of wells and the taking and transportation of natural gas in the Hugoton Field, located in Texas County, Oklahoma, the productive area of which covers a large part of said county and extends north into the State of Kansas and South into the State of Texas, but the boundaries of which cannot be determined with certainty

until more wells are drilled. All wells in the field are producing from the same common source of supply of gas.

2. *Allocation Formula.* A formula shall be, and is hereby, adopted for the purpose of allocating gas production to the wells in the field, which formula shall consist of acreage and deliverability factors as hereinafter defined; the same formula shall be applied as herein set out.

[fol. 997] 3. *Acreage Factor*—(a) Each operator in said field shall divide his acreage into units, which shall be considered by the Commission as the acreage drained by each well in allocating gas production so as to protect the interests of all parties and prevent waste and equalize drainage. A unit, as used in this order, shall consist of not more than 640 acres, which shall be in one section according to the United States Governmental Survey thereof; provided that, where it is shown by clear, cogent and convincing proof that it is impossible or impracticable to form a unit entirely within one section, the Commission may approve an exception thereto upon the filing of an application by the operator and after due notice and hearing; but no presumption shall arise from this order that the Commission will authorize the organization of any unit where the acreage is not entirely within one section. Short sections lying adjacent to the Kansas-Oklahoma state line, which according to the United States Governmental Survey contain materially less than 640 acres may be communitized with adjoining 640 acre sections upon approval and order of the Commission after notice and hearing; provided that, the acreage factor for such unit in the allocation formula shall not exceed 800 acres.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production only developed acreage shall be considered; and developed acreage shall mean any unit on which there is one or more producing wells having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or [fol. 998] otherwise, shows to the Conservation Officer that he is ready, willing, and able to make a connection and the

pipeline or other outlet refused to take his gas, then his acreage shall be deemed developed acreage under this order.

(c) Whenever two or more leases, or parts of leases, are consolidated for the purpose of forming a unit as defined in this order, such consolidated lease shall be developed and operated as a single lease, and the gas production therefrom shall be distributed and allocated to the separate tracts within the unit in the ratio that the acreage contained in each tract within the unit bears to the whole and undivided acreage, contained in the unit, and the royalty accruing by reason of said production, unless the royalty owners otherwise unanimously agree in writing, shall be distributed, apportioned, and paid in accordance with said ratio. If the owners of separately owned tracts and the royalty owners cannot agree upon a unit and the proper distribution of the production, then the Commission will, upon application of any interested party, and after due notice and hearing, determine and order what should constitute a unit and the proper division and apportionment of the production between the owners of leases, royalties, and mineral rights in order to insure to each his just and equitable share of the production and insure equitable taking and protect the correlative rights of all interested parties.

[fol. 999] (d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the Units, and in no event shall be farther from the center thereof than the center of one of the four ten-acre tracts adjacent to the center of the unit, except upon special order of the Commission after notice and hearing.

(4) (a) *Deliverability Factor—Pressure*—The deliverability of each connected well in the Hugoton Field shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be

maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the field will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation officer that it is impracticable to maintain the [fol. 1000] pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average producing rate for the entire 72 hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above atmosphere assumed to be 14.4#, shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D\text{—}R \left\{ \frac{P^2\text{—}Pw^2}{P^2\text{—}Pw^2} \right\} .85$$

Where:

D—Deliverability.

R. Observed producing rate.

P.—Shut-in pressure of the well, pounds absolute.

Pd—Deliverability standard pressure, converted to pounds absolute.

Pw—Working well-head pressure at Rate R, pounds absolute.

[fol. 1001] Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its open flow and deliverability of all wells in the field. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed.

(b) The deliverability of each well in the field shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of October 1, 1944, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission.

[fol. 1002] (c) The Conservation Officer shall give written notice to each operator and producer in the field of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

5. *Well Allowables*—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a field allocation factor shall be de-

termined by dividing the total anticipated production from the field for such period by the sum of the product of deliverability times the acreage factor for all the wells in the field; then multiply the field allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided, however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of acres in any unit. Allowable period as used in this order shall mean a calendar month.

[fol. 1003] (b) Before a well is entitled to an allowable the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remaining part of said period.

6. *Allowable Periods—Hearing*—There are hereby established two market demand periods for each year, one beginning April 1 and ending September 30 and the other beginning October 1 and ending March 31, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and

additional hearings may be called upon the application of the Conservation Officer, Conservation Attorney, or any other interested party.

[fol. 1004] 7. *Underproduction and Overproduction*—All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or substracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, same shall be canceled, unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.

8. All purchasers, takers, and producers of gas in the Hugoton Field shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes, by purchasing, producing, and taking all of the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

[fol. 1005] 9. This order shall be effective as of January 1, 1945, as of 7 o'clock, A. M.

10. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing in this cause, or from any other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

11. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and Performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 27th day of December, 1944.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; ——— ———, Commissioner. (Seal.)

Attest: Tom McMurray, Secretary.

[fol. 1006] EXHIBIT 9

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 983. Order No. 17867

In the Matter of the Application of WALKER T. POUND, Conservation Officer, for a Well Spacing Order and Rules and Regulations Governing Production and Ratable Taking of Natural Gas in the Guymon Hugoton Field, Texas County, Oklahoma

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock A. M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made: Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C.

Foulston, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. DeParade for Phillips Petroleum Company; Dol Howard and Joe Rolston, Jr. For Cities Service Gas Company, Jarman and Jarman by Ed White for A. P. Gardner; and John Schooppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1946, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

[fol. 1007] Findings

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate and hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its order No. 17410 in Cause *DC* No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the conservation Department has been operating under said order since January 1st, 1945.

3. That under date of December 27, 1944, the Commission issued its order No. 17410 in Cause CD No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1st, 1945.

[fol. 1008] 4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the largest known gas reserves in the United States; that a large portion of said field lies within Texas County, Okla-

homa, and has been named by this commission the "Guymon-Hugoton Pool"; that the probable productive area of said Pool is hereinafter more specifically described in this order.

5. That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Cider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet; that an average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

6. That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been pro- [fol. 1009] duced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which if not equalized by counter-drainage from other properties, results in disproportionate production by the wells on the respective proportions.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool,

and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410, should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

[fol. 1010] 10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

[fol. 1011] 11. That pursuant to said statutes the Corporation Commission in January 1945, adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests

of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the General Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in the order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and percentage of capacity to pro- [fol. 1012] duce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental survey; that drilling units should be established for said Guymon-Hugoton Pool which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capac-

ity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent [fol. 1013] waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that is fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying said unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which [fol. 1014] there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit or to make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowable for such unconnected well should begin as hereinafter provided in this order.

19. That there should be two market demand periods each year, one beginning April 1 and ending September 30,

and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out [fol. 1015] the anticipated production from the field and the allowable for each well for each calendar month of the period; and under-production and over-production which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery prevent drainage not offset by counterdrainage, and encourage future development.

It is the intention—purpose and policy of the Corporation Commission of the State of Oklahoma in issuing this order to promulgate rules and regulations as authorized and directed by the laws of the State of Oklahoma governing production of natural gas in order to prevent waste, providing a uniform method of determining a percentage of the well's capacity to produce, and for ratable taking of gas, in order to protect the interests of the public and all parties

interested therein, and to give each operator an opportunity to produce currently his proportionate part of the gas and ultimately to produce approximately the amount of gas originally underlying the surface of the land owned by him.

It is not the intention to limit or restrict the market demand for gas in the Guymon Hugoton pool, but only to restrict production to market demand and prorate production equitably and fairly among the producers and owners.

It is further the intention of the commission that that portion of the Hugoton field in the state of Oklahoma be referred to as the Guymon Hugoton pool.

[fol. 1016] ORDER

It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;
Townships Two (2) Three (3), and Four (4) North Ranges Twelve (12) to Eighteen (18) East; and
Townships Five (5) and Six (6) North Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian,

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above

described shall be drilled in the manner and according to the pattern herein described.

[fol. 1017] The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled to points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. *Allocation Formula.* A formula shall be, and is hereby adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. *Acreage Factor*—9a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his [fol. 1018] gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. Before any unconnected well shall be granted an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good

faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as [fol. 1019] fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) *Deliverab-lity Factor—Pressure.* The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in-well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operat-

[fol. 1020] ing conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72 hour *stes* period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72 hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Fehronheit and a base pressure of two pounds (2#) above atmosphere assumed to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

[fol. 1021] $$D\text{-}R \left\{ \frac{P^2 - Pd^2}{P^2 - Pw^2} \right\} .85$$

Where D—Deliverability
R—Observed producing rate
P—Shut-in pressure of the well, pounds absolute
Pd—Deliverability standard pressure, converted to Pounds absolute
Pw—Working well-head pressure at Rate R, pounds absolute

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut

in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or to take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered in connection with the average relationship between the estimated capacity to produce and deliverability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable shall be made retroactive to the date when the well was first entitled to an allowable.

[fol. 1022] (b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. *Well Allowables*—(a) In order to determine the amount of gas that should be produced from each well for [fol. 1023] any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet, for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall moot all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. *Allowable Periods—Hearings.* There are hereby established two market demand periods for each year, one beginning April 1st and ending September 30th and the other beginning October 1, and ending March 31st, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based [fol. 1024] upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will

be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. Underproduction and Overproduction—All underproduction and over production occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is [fol. 1025] made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be cancelled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be cancelled.

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchasor and ratable taking provisions of the Oklahoma Statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discrimminate in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the

well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

[fol. 1026] 11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in no wise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and Performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; —— ——, Commissioner.

Attest:

Tom McMurray, Secretary. (Seal.)

[fol. 1027] EXHIBIT 10

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD. No. 914

Order No. 17359

In the matter of the Application of CABOT CARBON COMPANY for Permission to Build a Carbon Black Plant in Texas County for the United States Government

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 18th day of September, 1944, at 10 o'clock, A. M., upon the application of Cabot Carbon Company and pursuant to an order of the Commission setting the cause for hearing and notice thereof published as required by law, at which hearing applicant appeared by its attorney, Ross Rizley, and by E. L. Green, Jr., and Hugh Burdette; various citizens of Guymon and Texas County appeared, representing the Guymon Chamber of Commerce, the City of Guymon, and landowners; and the following protestants appeared: Cities Service Gas Company by R. E. Cullison and Glenn W. Clark; Republic Natural Gas Company by George Siefkin; Northern Natural Gas Company by J. L. Parmalee and C. P. Croft; Skelly Oil Company by Colin C. Rae; Phillips Petroleum Company by E. G. DePrade; Magnolia Petroleum Company by W. R. Wallace; and Panhandle Eastern Pipeline Company by Edward W. Lange; the Conservation Attorney and Conservation Officer were present, and evidence was adduced and the Commission took the matter under advisement.

Now, on this 24th day of November, 1944, the Commission, having considered all of the evidence received at said hear- [fol. 1028] ing and numerous communications from the War Production Board and others interested in the matter, and being fully advised in the premises, finds as follows, to-wit:

Findings

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That applicant, Cabot Carbon Company, shows that it has been requested by the War Production Board of the United States Government to construct a carbon black plant which will use approximately 30,000,000 cubic feet of natural gas per day in the manufacture of carbon black to supply the nation's military requirements; that it is proposed to build said plant with government funds, same to be owned and controlled by Defense Plants Corporation, and leased to Cabot Carbon Company; that applicant proposes to locate said plant in Texas County, near Guymon, Oklahoma, and to use gas produced from the Hugoton Gas Field located in Texas County, and in such manufacture to use the channel process.

[fol. 1029] 3. That in addition to the allegations of the application, the testimony clearly disclosed that the proposed plant is to be built, owned, and controlled by the United States Government, and that the application was in truth and in fact an application of the United States Government as a war measure, through Cabot Carbon Company as agent; that the plant proposed to be constructed would cost more than $1,000,000.

4. That since said hearing the Commission has received several telegrams and had several telephone conversations with representatives of the War Production Board in Washington, D. C., and has conferred with various operators opposing the issuance of this order.

5. That the Commission is of the opinion that if there is sufficient gas going to waste in other fields of the United States, such gas should be used in the manufacture of carbon black rather than to use the sweet gas produced in the Hugoton Field; and at all times the Commission has relied upon the United States Government, acting through the Chemicals Division of the War Production Board, to furnish

information concerning the availability of gas in other parts of the United States.

6. That under date of August 31, 1944, the Commission received a telegram from W. R. Twombly, WPB Chemicals, stating in substance that for the production of 15,000,000 [fol. 1030] pounds of channel black per year, the Government is to build the plant, and "any thing you are able to do to assist in making available the required quantity of natural gas will be appreciated;" that under date of September 5, 1944, the Commission received a telegram from D. P. Morgan, WPB Chemicals, stating among other things: "Cabot Carbon Company has stated the only available gas is from the Hugoton Field in Oklahoma:" that under date of November 1, 1944, a telegram from D. P. Morgan, WPB Chemicals, stated among other things; "A study of the carbon black situation just completed shows shortage of channel carbon black with insufficient production to meet the nation's military and essential civilian tire program. Therefore we ask that you consider favorably the request of Cabot Carbon Company for permission to use gas produced from the Hugoton Gas Field in Texas County, Oklahoma."

7. That on or about November 21, 1944, and upon several occasions prior thereto and since the hearing in this cause, W. R. Twombly, of the Chemicals Division of the War Production Board, talked with Judge Reford Bond, Chairman of this Commission, by long distance telephone from Washington, D. C., and requested that the Commission act favorably upon the application of the Cabot Carbon Company, and in these conversations it was agreed that an additional investigation would be made by the War Production Board concerning the availability of gas in other fields, and the Commission is advised that such investigation was made; that on the 21st day of November the following telegram was received by Reford Bond, Chairman, signed by W. F. Twombly, WPB Chemicals, towit:

> "Military war requirements for Channel Black as shown in just completed survey by rubber director confirms urgent need for Texas County gas for Cabots Defense Plants Corporation plant. It is essential to the successful prosecution of the war that all approved new facilities be brought into production at once without further delay. South Eunice gas is needed elsewhere

in the approved program. Therefore Texas County gas is essential for Cabot to produce its portion of the required expansion. All arrangements have been made to produce at once with construction of plant when gas is approved. Continued delay will impede war effort. This request for Oaklahoma Gas is made only for the duration of the emergency plus six months. Prompt action on the part of the Oklahoma Commission is urgently requested."

8. That in peacetime conditions it may be determined that the use of sweet gas in the manufacture of carbon black is waste, but when authorized federal agencies assert that the use of sweet gas in the manufacture of carbon black is essential to win the war and that every day granting of the application is delayed, winning the war is delayed, and that prompt action is necessary, then it can no longer be successfully contended that the use of sweet gas in the manufacture of carbon black for the war emergency is waste, and the Commission does not consider such use waste.

9. That pursuant to the request of the War Production Board, as hereinabove set out, and solely for the purpose of aiding in the war effort, the Commission is of the opinion that a permit should be granted to Cabot Carbon Company, as agent of Defense Plants Corporation, a corporation created by the Reconstruction Finance Corporation of [fol. 1032] the United States Government, to construct a carbon black plant near the city of Guymon in Texas County, Okla., and to use therein approximately 30,000,000 cubic feet per day of natural gas produced from the Hugoton Gas Field of Texas County, Oklahoma, in the manufacture of carbon black by the channel process.

10. That from the evidence introduced in this cause it appears that no gas should be used in the manufacture of carbon black at a price less than the going price of gas in said field.

11. That the going price of gas in the Hugoton Field in Texas County, Oklahoma, is at this time not less than five cents (5¢) per MCF.

12. That said permit should be subject to the following limitations and qualifications: (1) that same be limited to

the duration of the war and six months thereafter; and (2) the price of gas used in said plant shall be at least five cents (5¢) per MCF.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That applicant, Cabot Carbon Company, as agent and representative of Defense Plants Corporation, a corporation created by Reconstruction Finance Corporation, be, and it is hereby, granted permission to construct a carbon black [fol. 1033] plant near Guymon, in Texas County, Oklahoma, and to use therein approximately 30,000,000 cubic feet of natural gas produced from the Hugoton Field of Texas County, Oklahoma, per day in the manufacture of carbon black by the channel process.

2. This permit is granted subject to the following conditions and limitations: (1) Same shall continue only for the duration of the war and six months thereafter, at which time it will expire by its terms without additional order of this Commission; and (2) the price of gas used in the manufacture of carbon black in said plant shall be at least five cents (5¢) per MCF, and if less than five cents, this permit shall immediately become inoperative.

3. In the manufacture of said carbon black applicant shall be required to purchase all the natural gas produced and offered for sale in the vicinity of said plant, or which may be reasonably reached by pipe lines or other systems in the vicinity of said plant, without discrimination in favor of one producer or person as against another; and if applicant is unable to purchase all of said gas so produced and offered for sale, it shall purchase said natural gas from each person or producer ratably on such ratable basis as shall be established by this Commission or by the laws of the State of Oklahoma.

Done and performed by the Corporation Commission of the State of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 24th day of November, 1944.

[fol. 1034] Corporation Commission of the State of Oklahoma. Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; —— ——, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[fol. 1035] EXHIBIT 11

Registered Mail—Return Receipt Requested.

June 14, 1945.

Judge R. E. Cullison, Cities Service Gas Company, First National Building, Oklahoma City 2, Oklahoma.

Re: Peerless Oil & Gas Company, Section 8, Township 4 North, Range 16 E. C. M. Texas County, Oklahoma.

DEAR JUDGE:

I do not wish you to feel that I am unduly pestering you in this matter, but since the new order covering the Hugoton Gas Field has become effective and since it provides that a copy of a tender must be sent to the Corporation Commission, we are again mailing you a tender of our gas produced from the well located on the above property.

Very truly yours, Richardson Shartel Cochran & Pruet, by Earl Pruet.

EP: LC.
Enc.
CC—Corporation Commission, State Capitol, Oklahoma City, Oklahoma.

[fol. 1036] EXHIBIT 12 is a letter dated June 14, 1945, addressed to Cities Service Gas Company, First National Building, Oklahoma City 2, Oklahoma, from Peerless Oil and Gas Company, and is the identical letter a copy of which has heretofore been introduced in evidence as Exhibit *B* of Exhibit *I*.

To avoid duplication and encumbering of this record Exhibit 12 is not here copied but reference is made to the index at the beginning of this record.

EXHIBIT 13 is a "Return Receipt"—for reasons stated in the Stipulation entered into by counsel for the parties, which stipulation is included and indexed in this record Exhibit 13 is not made a part of this record.

EXHIBIT 14 is a "Return Receipt"—for reasons stated in the Stipulation above referred to Exhibit 14 is not here shown.

EXHIBIT 15 is a "Receipt for registered Article"—for reasons stated in said Stipulation Exhibit 15 is not here shown.

EXHIBIT 16 is a "Receipt for Registered Article"—for reasons stated in said Stipulation Exhibit 16 is not here shown.

[fol. 1037] EXHIBIT 17

J. L. King—Exhibit 17—Official Reporter

Richardson, Shartel, Cochran & Pruet
1133 First National Building,
Oklahoma City, Oklahoma

March 25, 1946.

Registered—*Return Receipt Requested.*

Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

Attention: Judge C. F. Cullison and George H. Baird.

Re: Peerless Oil & Gas Company v. Cities Service Gas Co., #105—Civil, Before the Corporation Commission of the State of Oklahoma.

GENTLEMEN:

Sometime ago we entered into negotiations looking toward the sale of natural gas from the well involved in the above action and from natural gas to be produced from other acreage owned by Mr. Taylor. At that time it was suggested by you and Mr. Baird that Cities Service Gas Company would be willing to take natural gas from the acreage owned by Mr. Taylor in Texas County, Oklahoma, to the extent of all or approximately all of such acreage now owned by Mr. Taylor on terms similar to those contained in the contract which Cities Service Gas Company entered into with Skelly Oil Company providing for a dedication of the acreage involved for the life of the lease at a price of 4 cents at the well head or 4½ cents delivered to your pipe line. I discussed the price and terms with Mr. [fol. 1038] Vernon Taylor, President of Peerless Oil and

Gas Company, and thereafter informed you that neither the price nor the terms were acceptable.

We recently again renewed negotiations at which time I informed you that Mr. Taylor was negotiating with reference to a dedication of his acreage. The result of our recent conference was a proposition similar to that set above as to price and terms, except that you then offered to provide that the price of natural gas should be subject to renegotiation at the end of each five year period from and after the date of the contract for the purpose of determining whether or not the price should be increased and that, however, the minimum price for the life of the leases would be that stipulated at the time of the first proposition.

In the meantime I am informed that Mr. Taylor has made a dedication of most of his acreage in Texas County, which dedication does not however, include the well involved in the above action or any other well with reference to which a tender of natural gas has been made by Peerless.

With reference to the well involved in the above cause and any other well with reference to which the Peerless Oil and Gas Company has made a tender to Cities Service Gas Company, the proposed terms and price last above referred to as resulting from our most recent conferences are not satisfactory to Peerless Oil and Gas Company.

[fol. 1039] Yours very truly, Richardson, Shartel, Cochran & Pruet. By Earl Pruet.

EP:e

(Attached to foregoing letter is a Receipt for Registered Article No. 9074, which is marked Exhibit 18, but, under terms of Stipulation of Counsel is not copied here.)

[fol. 1040] Exhibit 18—by the provisions of the Stipulation hereinbefore mentioned, this Exhibit, which is a Registry Receipt, is not made a part of this record.

Exhibit 19—by the provisions of the Stipulation hereinbefore mention-, this Exhibit, which is a "Return Receipt" for registered mail, is not included in this record.

Exhibit 20—Exhibit 20 is a letter dated June 14, 1945, from Peerless Oil & Gas Company to Cities Service Gas Company, and is the identical letter a copy of which is at-

tached as Exhibit B to Exhibit 1 (The Application), and as same has been set out in full as a part of Exhibit 1, and indexed accordingly, Exhibit 20 is not here copied.

[fol. 1041] EXHIBIT 21

J. L. King—Exhibit 21—Official Reporter

Registered—*Return Receipt Requested.*

March 25, 1946.

Mr. Lawrence Alley, Corporation Commission, Conservation Department, State Capitol Office Building, Oklahoma City, Oklahoma.

DEAR SIR:

Herewith find copy of our tender made to Cities Service Gas Company with reference to our well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

Yours very truly, Richardson, Shartel, Cochran & Pruet. By Earl Pruet.

EP:e
Enc. 1

[fol. 1042] EXHIBIT 22—Exhibit 22 is a copy of a letter dated June 14, 1945, (Registered Mail Return Receipt Requested), from Peerless Oil & Gas Company to Cities Service Gas Company, and is identically as Exhibit B to Exhibit 1 (The Application), heretofore copied and indexed herein, hence is not here copied but reference is made to the index at the beginning of this record.

EXHIBIT 23—Exhibit 23 is a Registration Receipt which, under provisions of the Stipulation heretofore mentioned is not included as a part of this record.

EXHIBIT 24—Exhibit 24 is a "Return Receipt" Form 3811 Rev. 1-4-40, signed "Lawrence Alley—Corp. Com., by M. J. Burris", dated "Date of Delivery 3-27-1946" for "Registered Article No. 9074", Post Office, Oklahoma City, State of Oklahoma.

[fol. 1043] EXHIBIT No. 25

Mailing List—Hugoton Gas Field

Panhandle Eastern Pipe Line Co., W. H. Tompkins, Liberal, Kansas

Panhandle Eastern Pipe Line Co., F. A. Richmond, Liberal, Kansas

Fin-Ker Oil & Gas Prod. Co., C. J. Thompson, Holcomb, Kansas

Carter Oil Co., P. D. Baker, Natl. Bank of Tulsa, Tulsa, Oklahoma

Shell Oil Co., S. W. Holmes, 1006 Central Bldg., Wichita, Kansas

Cabot Carbon Company, Bill Paden, Guymon, Oklahoma

Cabot Carbon Company, Mr. Green, Box 1101, Pampa, Texas

Cities Service Gas Co., Ross Stuntz, First Natl. Bldg., Oklahoma City

Cities Service Gas Co., Lane Ferguson, Bartlesville, Oklahoma

Cities Service Gas Co., Buddy Patton, Box 469, Guymon, Oklahoma

Gulf Oil Corp., First Natl. Bldg., Tulsa, Oklahoma

Hagy, Harrington & Marsh, Amarillo, Texas

Kansas Corporation Commission, Conservation Division, 800 Bitting Bldg., Wichita, Kansas

T. A. Morgan

R. S. Ream (2 copies All with Kansas Corp. Com.)

L. B. Taylor (2 copies)

Magnolia Petroleum Company, W. R. Wallace, Box 1898, Oklahoma City

Magnolia Petroleum Company, Mr. Black, Box 900, Dallas, Texas

Magnolia Petroleum Co., J. F. Lewis, Duncan, Oklahoma

Stanley Marsh, Jr., Amarillo, Texas

Mid-Continent Petroleum Co. Mid-Continent Building, Tulsa, Oklahoma

S John Wells, Box 440, Guymon, Oklahoma

Luther Pierson, Box 163, Pampa, Texas

[fol. 1044] Northern Natural Gas Co. John M. Hanley, Aquilla Court Bldg., Omaha 1, Neb.

Northern Natural Gas Co. J. L. Parmelee, 804 Rule Bldg., Amarillo, Texas

Panhandle Eastern Pipe Line Co. Mr. C. H. Hinton, 1221 Baltimore, Kansas City, Mo.

Peerless Oil & Gas Company, Alamo Bldg., San Antonio, Texas

Dick Phillippe, Hugoton, Kansas

Phillips Pet. Co. Chas. W. Bi[illegible]ckley, Bartlesville, Oklahoma City (5 copies)

Phillips Pet. Co. T. C. Craig, Box 1751, Amarillo, Texas

Phillips Petroleum Co., Mr. Harry Turner, First National Bldg., Oklahoma City

Republic Natural Gas Co., Mr. Flood & Mr. A. O. Shaw, Hugoton, Kansas

Republic Natural Gas Co., Robert C. Foulston, 608 Fourth Natl. Bank Bldg., Wichita, Kansas

Republic Natural Gas Co., T. K. Knox, 1505 Federal Street, Dallas, Texas

Republic Natural Gas Company, Alfred Hyrlburt, 1505 Federal Street, Dallas, Texas

Renfrew Investment Co. A. E. Miller, Woodward, Oklahoma

Sinclair Prairie Oil Co. O. E. Dougherty, Sinclair Bldg., Tulsa, Oklahoma

Skelly Oil Co. George Selinger, Skelly Bldg., Tulsa, Oklahoma

Skelly Oil Co. Colin Rae, Skelly Building, Tulsa, Oklahoma

Southwestern Public Service Co. Grady Thompson, Guymon, Oklahoma

Southwestern Public Service Co. L. F. Roberts, Borger, Texas

Stanolind Oil & Gas Co. R. L. Regan, Stanolind Building, Tulsa, Oklahoma

The Texas Company, H. N. Pardee, Philtower Bldg., Tulsa, Oklahoma

Panhandle Eastern Pipe Line Co., Mr. Haine, 1221 Baltimore, Kansas City, Mo. (6 copies)

[fols. 1045-1046] Mr. D. C. Arnold, National Bank of Tulsa, Tulsa, Oklahoma

Franklin Clarke Browne, 4119 Ellis Avenue, Chicago, Illinois

Columbian Fuel Corp., H. W. McCue, 807 Rule Building, Amarillo, Texas

Gerard J. Neuner, 1200 Waltower Bldg., Kansas City, Missouri

P. R. Beach, Land & Lease Department, Liberal, Kansas

Lath Shores, Route 5, Box 12-B, Enid, Oklahoma

[fol. 1047] EXHIBIT 27

There was produced during the month of March, 1946, 109,426 thousand cubic feet of natural gas from lands owned by the State of Oklahoma in Texas County, from which the State receives the entire one-eighth royalty interest. This gas, measured on the base of 2 lbs. above atmospheric pressure, represents an excess of 13,131 thousand cubic feet more than the gas that was paid for based on percent practices of measurement. The State, therefore, during the month of March 1946, lost $525.24 of income.

Exclusive of the gas produced from State Lands, there was produced in Texas County, Oklahoma 6,930,174 thousand feet of gas in the month of March, 1946. This gas, measured at 2 lbs. above atmospheric pressure, represents a volume of 831,621 thousand cubic feet which was actually produced in excess of the amount reported and paid for. The tax on this excess amount would have been, if paid for $1,663.25. Taking the excess gas mentioned in the two above paragraphs and the excess amount which the State should have received plus the tax on the amount produced on non-State Lands, we have a volume of gas of 844,752 thousand cubic feet involved for the month of March, 1946 and the sum of $2,188.49 involved which should have accrued to the State.

[fol. 1048] Multiplying these sums by 12, we get the sum of $26,261.88 on an annual basis.

It is certainly to be expected that the amount of gas produced in Oklahoma will greatly increase and that these figures are only indicative of what the State may lose in the future because the volume of gas which will be produced in the years ahead will be several times that being produced currently. It is extremely important that the

State authorities take notice of this situation and take steps to correct it.

[fol. 1049] Average estimated ultimate gas recovery per acre ..... 10,000,000 Cu. Ft.

Average estimated ultimate gas recovery per royalty acre ..... 1,250,000 Cu. Ft.

Royalty Value at $0.04 per thousand Cu. Ft. ..... $50.00 per Acre

Undeveloped but proven productive State Land in Texas County, Oklahoma totals ..... 11,400 Acres

Value of 11,400 Acres @ $50.00 per acre $570,000.00

(The Method of Measuring gas at 2 pounds above atmospheric pressure amounts to a discount of better than 10%) or $57,000.00

If the gas is sold at $0.08 per thousand Cubic feet—the loss to the State of Oklahoma for this method of measurement would be $114,000.00

The ultimate loss by the State of Oklahoma for its mineral interests under 11,400 acres of proven undeveloped Gas royalty in Texas County, Oklahoma (Hugoton Gas Field) calculated of $0.08 per thousand cubic feet (MCF) instead of $0.04 per MCF (the prevailing market price) and a gas measurement based on 2 pounds above atmospheric would be as follows:

11,400 Acres x 10,000,000 Cu. Ft. x 1/8 Royalty x $0.08 Per MCF = ... $1,140,000.00

11,400 Acres x 10,000,000 Cu. Ft. per acre x 1/8 Royalty x $0.04 per MCF = ... $ 570,000.00

Loss by Difference in Market Values ..... $ 570,000.00

Plus 10% Loss for method of measurement .. $ 57,000.00

Total loss by State of Oklahoma ..... $ 627,000.00

[fol. 1050]

Schlolland

Producing Acres	Description
160	NE 1-4N-15 ECM
160	NE 35-4N-15 ECM
320	E/2 19-3N-15 ECM
640	22-3N-16 ECM
160	SW 9-2N-15 ECM
640	4-2N-14 ECM
640	36-1N-13 ECM
2,720 Total Acres	

Undeveloped Proven Acres	Description
320	s/2 18-6N-17 ECM
160	SE 17-6N-15 ECM
160	NE 20-6N-15 ECM
160	NE 32-6N-14 ECM
160	SE 6-6N-13 ECM
640	36-6N-13 ECM
160	SW 17-5N-13 ECM
160	SW 36-4N-16 ECM
160	E/2 EW & W/2 NE 12-4N-15 ECM
320	N/2 1-4N-13 ECM
160	NW 21-4N-13 ECM
160	SE NW & SW NE & N/2 SE 1-3N-13 ECM
160	SE 6-3N-14 ECM
640	1-3N-15 ECM
160	NE 29-3N-15 ECM
520	S/2 & NW & SE NE 6-3N-16 ECM
160	SW 16-3N-16 ECM
320	S/2 NW & SW & E/2 SE 9-2N-18 ECM
480	N/2 & SW 16-2N-18 ECM
240	SW & S/2 SE 11-2N-17 ECM
480	N/2 & SE 17-2n-17 ECM
360	NE & N/2 SE & E/2 NW & NW NW 14-2N-17 ECM
160	SE 29-2N-17 ECM
480	N/2 & SW 36-2N-17 ECM

[fol. 1051]

160	NE 16-2n-16 ECM
320	S/2 5-2N-14 ECM
160	NE 8-2N-14 ECM
160	SE 16-2N-14 ECM
320	S/2 21-2N-14 ECM
160	SW 31-2N-14 ECM
640	36-2N-13 ECM
320	W/2 36-2N-12 ECM
160	SW 22-1N-12 ECM
480	S/2 & NW 31-1N-12 ECM
200	NE & NE SE 17-1N-13 ECM
640	12-1N-13 ECM
320	E/2 15-1N-13 ECM
320	N/2 7-1N-14 ECM
11,400 Total Acres	

[fol. 1052] EXHIBIT 28

According to ruling of Court Letter attached to Exhibit 28 Stricken.

[fol. 1053] Area under consideration consists of five (5) square miles (twenty-five (25) sections) surrounding section 8, Township 4 North, Range 16 E. C. M., the Peerless Oil & Gas Company—No. 1 Conwill Lease, Texas County, Oklahoma.

Within the above area, sixteen (16) gas wells have been completed of which fourteen (14) are marketing the gas production. The Cities Service Gas Company owns fourteen (14) of the sixteen (16) producing wells.

14 Wells Gross Accumulative production to April 1, 1946	15,522,079 MCF
Gross Production Per Section to April 1, 1946	620,883 MCF
Value @ $0.04 per M. C. F.	$24,835.32
Total Loss Due to Drainage	($24,835.32)
14 Wells Gross Production during the year, 1945	7,025,772 MCF
Gross Production Per Section during the year, 1945	281,031 MCF
Value @ $0.04 Per M. C. F.	$11,241.00
Total loss for year 1945 for one non-producing section within the 25 section Area	($11,241.00)

[fol. 1054] METHOD OF CALCULATION

and

ESTIMATED FUTURE PRODUCTION

Weighted Initial Rock Pressure (14 Wells)	432 lbs.	
Average Rock Pressure for 14 completed wells (Summer, 1945)	389 lbs.	
Rock Pressure Decline since Initial Completions	43 lbs.	
Total Gross Accumulative Production	15,522,079 M.C.F.	
Total Gross Production Per Lb. RP Decline	360,979 M.C.F.	
Estimated Future Gross Production to 25# Abando-ment Pressure	131,396,356 M.C.F.	
One (1) Section Estimated Future Gross Production	5,255,854 M.C.F.	
Value @ $0.04 Per M.C.F.	$ 210,234.16	
Loss Due to Past Drainage	$ 24,835.32	
Future Loss if Peerless Conwill No. 1 Will Never — Allowed to Produce	$ 210,234.16	
Ultimate Total Loss Due to Drainage		$ 235,069.48

(Here follows Exhibit No. 28)

[fol. 1055]

EXHIBIT No. 28

Pertinent Data
of
Cities Service Gas Company's Producing Gas Wells (14)
located in
Portions of Townships 4 & 5 North, Ranges 15 & 16 East (ECM)
Texas County, Oklahoma

Company & Well Name	Location	Completion Date	Original Rock Pressure	Original Natural Open Flow	1944 Tests Deliver-Ability	1944 Tests Rock Pressure	1945 Tests Deliver-Ability	1945 Tests Rock Pressure	Total Production to 1-1-45	Total Production 1945	Jan., Feb. & March 1946	Total Production to 4-1-46
Cities Service Gas—												
Judd #1	36-5N-15 ECM	10- 9-45	406	25,000	.....	Not Drilled	.....	Not Drilled	.....	24,969	153,677	178,646
Johnson #1	35-5N-15 ECM	10- 7-42	436	22,178	4,005	413	3,184	385.5	627,800	569,735	52,168	1,249,703
Wilson #1	34-5N-15 ECM	5-15-44	431	21,801	4,241	418	1,750	384.3	389,567	342,264	39,039	770,870
Lively #1	1-4N-15 ECM	10-25-45	...	24,500	.....	Not Drilled	.....	Not Drilled	.....	.....	178,723	178,723
Tarver #1	2-4N-15 ECM	12-20-45	383	31,900	.....	Not Drilled	.....	Not Drilled	.....	45,812	181,359	227,171
Vogel #1	3-4N-15 ECM	10-15-43	435	18,725	4,554	416	2,405	381.3	498,773	476,140	80,304	1,055,217
Shillings #1	10-4N-15 ECM	9- 8-43	...	32,468	5,715	415	6,842	383.7	769,419	939,473	199,882	1,908,774
Bartels #1	11-4N-15 ECM	9- 2-42	439	34,100	6,522	418	5,178	390.8	698,105	863,217	128,875	1,690,197
Fechtler #1	13-4N-15 ECM	3-23-44	...	16,743	3,718	422	2,054	397.7	404,191	323,741	40,117	768,049
Williams #1-B	14-4N-15 ECM	9- 7-43	435	20,481	5,609	419	3,621	397.9	544,486	436,975	140,625	1,122,086
Caplinger #1	15-4N-15 ECM	12-22-43	...	27,800	6,557	416	8,310	384.8	751,225	734,729	198,328	1,684,282
Klingsick #1	22-4N-15 ECM	2- 6-44	...	28,232	6,889	416	5,305	385.0	551,102	665,747	128,327	1,345,176
Gieselman #1	23-4N-15 ECM	2-23-44	...	28,307	.....	435	6,770	390.6	691,389	883,805	203,750	1,778,944
Brune #1	24-4N-15 ECM	4-21-43	438	22,000	7,421	420	4,863	398.7	704,824	719,165	140,252	1,564,241
Grand Totals								428.03	6,630,881	7,025,772	1,865,426	15,522,079 MFC
(Average Rock Pressure Per Well)								389.1)				

					1946 Tests Rock Pressure	1946 Tests Potential			
Peerless Oil & Gas									
Fisher #1	5-4N-16 ECM	2- 7-46	417	37,500	....	416.9	35,406	.....	....
Conwill #1	8-4N-16 ECM	5-16-45	427	40,000	....	419.5	53,02[illegible]	.....	....

[fol. 1056] EXHIBIT No. 29

Average estimated ultimate gas recovery per acre	10,000,000 Cu. Ft.
Average estimated ultimate gas recovery per royalty acre	1,250,000 Cu. Ft.
Royalty value at $0.04 per thousand cu. ft.	$50.00 per Acre
Undeveloped but proven productive State Land in Texas County, Oklahoma totals	11,400 Acres
Value of 11,400 Acres @ $50.00 per acre	$570,000.00
(The Method of Measuring gas at 2 pounds above atmospheric pressure amounts to a discount of better than 10% or	$57,000.00
If the gas is sold at $0.08 per thousand cubic feet the Loss to the State of Oklahoma for this method of measurement would be	$114,000.00

The Ultimate Loss by the State of Oklahoma for its mineral interests under 11,400 acres of proven undeveloped Gas royalty in Texas County, Oklahoma (Hugoton Gas Field) calculated of $0.08 per thousand cubic feet (MCF) instead of $0.04 per MCF (the prevailing market price) and a gas measurement based on 2 pounds above atmospheric would be as follows:

11,400 Acres x 10,000,000 Cu. Ft. x ⅛ Royalty x $0.08 per MCF =	$1,140,000.00
11,400 Acres x 10,000,000 Cu. Ft. per acre x ⅛ Royalty x $0.04 per MCF =	$ 570,000.00
Loss by Difference in Market Values	$ 570,000.00
Plus 10% loss for method of measurement	57,000.00
Total Loss by State of Oklahoma	$ 627,000.00

[fol. 1057] EXHIBIT No. 30

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. CD-1054

PEERLESS OIL & GAS COMPANY, a corporation, Plaintiff,

vs.

CITIES SERVICE GAS COMPANY, a corporation, Defendant

PETITION OF TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION

Come now the undersigned members of the Texas County Land and Royalty Owners Association and respectfully show to the Commission that they are land owners and mineral owners in the Guymon-Hugoton Gas Field in Texas County, Oklahoma; that they adopt the testimony of Homer W. Long as their own statement and as representing their views in the above entitled cause, and further hereby endorse and in all respects support the application of the Peerless Oil and Gas Company herein for the fixing of a minimum price in the Guymon-Hugoton Gas Field in Texas County, Oklahoma.

Dated this 7th day of May, 1946.

O. E. Chenault, Mike Quinn, Leroy Monser, J. T. Gibson, Harry Adams, Giles E. Miller, Dakota Bomgardner, Chas. Steinknehler, M. C. Young, C. E. Daily, Louis F. Fischer, I. O. Adams, A. C. Mauser, H. C. Petrowskey, M. R. Eberole, H. W. Wacker, Jerry B. Lancaster, William Brune, George Wright, Stanley Marsh, Pearl Bonheur, Rosa Quinn, J. W. [fol. 1058] Elmore, J. W. Duncan, C. E. Wilson, John G. Wiggins, Charles D. Wiggins, Chas Lee, Gilbert Steinknehler, Henry W. Wacker, Jr., Christine W. Hitch, Pansy C. Kotch, W. G. Hughes, Ruby E. Rizley, A. P. Gardner, Albert Heiwsoth, Pansy McDaniel, E. E. McDaniel, Paul Wright, Margaret Wright, Elizabeth Long, Chas. Williams, Donald Hughes, Caroline L. Blue, H. G. Gilmore, J. D. Key, Laura A. Gilmore, Fred Tuttle.

[fol. 1059] EXHIBIT 31

Federal Power Commission, Received January 19, 1939. Original Filing August 22, 1938.

Cities Service Gas Company, Rate Schedule EPC No. 8 Effective date August 14, 1937, Filing date August 22, 1938.

This agreement, made and entered into this 14th day of August, 1937, between Cities Service Gas Company, a Delaware Corporation, party of the first part, hereinafter referred to as Vendor, and The Gas Service Company, a Delaware Corporation, the *Kansas City Gas Company*, a Missouri Corporation, and The Wyandotte County Gas Company, a Kansas Corporation, parties of the second part, hereinafter referred to as Vendees, their successors and assigns, Witnesseth:

Whereas the Vendor now owns or holds in fee, by lease or under contract, large reserves of natural gas in Texas, Kansas and Oklahoma, aggregating approximately 1,200,-00- acres, and estimated to contain 2,875,000,000,000 cu. ft. of natural gas suitable for domestic and other uses and which Vendor considers adequate for the requirements of Vendees for a long period of years; and also owns and operates a pipe line system connecting such of said reserves as are presently necessary with the distribution systems of Vendees and others; and

Whereas Vendee, The Gas Service Company, owns and operates gas distribution systems in approximately 204 cities and towns and communities in Missouri, Kansas, Oklahoma, and Nebraska, serving approximately 128,272 consumers with natural gas for all purposes;

[fol. 1060] Vendee, the Kansas City Gas Company, owns and operates a gas distribution system in the city of Kansas City, Missouri, serving approximately 86,829 consumers, and Vendee, The Wyandotte County Gas Company, owns and operates a gas distribution system in the City of Kansas City, Kansas, serving approximately 25,054 consumers; and

Whereas Vendees now and for many years last past have purchased their entire gas requirements other than local gas from Vendor at their several city gates at rates heretofore agreed upon by the parties and so far as the State of Kansas is concerned, approved by the Courts of

that State and found to be reasonable by the United States District Court for the District of Kansas, and which several city gate rates the parties hereby recognize as reasonable; and

Whereas by reason of the fact that Vendor and Vendees are each affiliates of and directly or indirectly owned largely by Cities Service Company, a Delaware Corporation, and have largely a common beneficial ownership, no written contract between them has been considered necessary as it is and has been to the interest of Vendor to supply markets of Vendees and to the interest of Vendees to avail themselves of the reserves and facilities of Vendor, and

Whereas, in connection with certain financing now being undertaken by one of the parties hereto and contemplated by others, the requirement has been made that the present [fol. 1061] rates and practices of the parties now in effect under an oral day-to-day agreement or contract and the intention of the parties to continue such rates and practices be evidenced by a written contract;

Now, therefore, in consideration of the mutual convenants and agreements of the parties herein set forth, it is agreed; each Company for itself;

That the present rates or their equivalents and practices of the parties with reference to each other shall continue in effect for the term of fifteen (15) years from this date provided, however, that if an adequate and equally dependable supply of gas for Vendee's several requirements of the requirements of any separate distribution system owned by any Vendee is elsewhere obtainable through equally dependable facilities at a lower price, this contract may at the option of Vendee receiving such lower offer be terminated as to the quantity of gas so available at a lower price, Vendees hereby separately reserving to themselves the right to avail themselves of any and all benefits of friendly and open competition, provided, however, that if any Vendee elects, under the aforesaid conditions, to purchase any part of its supply from sources other than Vendor, the remaining requirements of such Vendee, if supplied by Vendor, shall be at such price as may then be mutually agreed upon.

Vendor hereby grants to Vendees the option to purchase from it at existing rates or their equivalents and practices or at such rates and under such conditions as may be

[fol. 1062] established by valid orders of any regulatory body having jurisdiction in the premises such quantities of gas as they may severally require for their present or future needs being fifteen (15) years, it being the intention hereby to give Vendees first call upon all gas available to Vendor for Vendees before same can be disposed of elsewhere, provided, however, that if sufficient gas is not available for the entire requirements of all Vendees the same shall be pro rated among them, or in such manner as may be determined by any duly constituted regulatory body having jurisdiction in the premises.

Vendor further agrees at all times to maintain gas reserves adequate for the requirements of Vendees if same can be produced, connected to the system and maintained without actual loss to Vendor from such operation.

This contract is in all respects subject to valid orders of duly constituted regulatory bodies having jurisdiction in the premises.

In witness whereof the parties hereto have caused this instrument to be signed by their proper officers thereunto duly authorized the day and year first above written.

Attest:
Cities Service Gas Company, by (S.) H. R. Straight, President, Vendor, T. P. Steeper, Ass't Secretary;

[fol. 1063] Attest:
The Gas Service Company, by B. C. Adams, Vice-President, Vendee, Harry Warner, Secretary;

Attest:
Kansas City Gas Company, by T. J. Strickler, Vice-President, Vendee, M. J. Barry, Secretary;

Attest:
The Wyandotte County Gas Company, by W. H. McKenzie, Vice-President, Vendee, J. W. McKee, Secretary.

The foregoing agreement is a true and correct copy of the original agreement.

T. P. Steeper, sworn to before me this 20th day of August, 1938.
Helen Percival, Notary Public.
My Commission expires March 25, 1942.

[fol. 1064] EXHIBIT 32

Cities Service Gas Company, Exhibit A to Rate Schedule FPC No. 8.

KANSAS CITY GAS COMPANY

A Cities Service Company

824 Grand Ave. Kansas City, Mo.

August 20, 1938.

Mr. George H. Baird, Manager, Cities Service Gas Company, Bartlesville, Oklahoma.

DEAR MR. BAIRD:

The attached rate schedule is in accordance with the rate effective as of August 22, 1938, for all gas delivered at Town Borders of Kansas City Gas Company for all purposes other than industrial sales on special contracts.

Very truly yours,
Kansas City Gas Company, (S.) T. J. Strickler, Vice Pres. & Gen'l Mgr.

The foregoing statement as to the rate schedule is true and correct.

Cities Service Gas Company, by (S.) Geo. H. Baird, Manager.

[fol. 1065] Rates in effect as of August 22, 1938, under contract with Kansas City Gas Company.

Rate Schedule No. 25.

Forty (40) cents per MCF applicable to the Town Border deliveries for all purposes other than industrial sales on special contracts.

The above rate schedule applies to the following towns in Missouri, Kansas City, Missouri and vicinity.

[fol. 1066] Here follows Exhibit 33, Photolithograph.

572A

Exhibit 33 Not Reproducible

[fol. 1067] EXHIBIT 34 is an order continuing cause in this case, dated May 8, 1946, and as this document is part of Secretary's files and is hereinbefore copied, and indexed, it is not here copied but reference is made to the indes.

EXHIBIT 35 is the application to intervene filed herein by the Commissioners of the Land Office of the State of Oklahoma, on June 19, 1946, and as same is part of the Secretary's files and is hereinbefore copied and indexed it is not here copied but reference is made to the index.

EXHIBIT 36 is the order allowing intervention by Commissioners of the Land Office, which is part of the Secretary's file and is hereinbefore copied and indexed, therefore this exhibit is not here copied but reference is made to said index.

EXHIBIT 37 is the petition in intervention filed by Commissioners of the Land Office, on June 19, 1946, which is part of the Secretary's file and is hereinbefore copied and indexed, therefore same is not here copied but reference is made to the index.

EXHIBIT 38 is an affidavit of mailing Notice of Hearing upon the Petition in Intervention above mentioned, which Affidavit was filed in the Secretary's Office, has been hereinbefore copied and indexed, therefore is not copied here but reference is made to the index.

[fol. 1068] EXHIBIT 39

AFFIDAVIT OF PUBLICATION

STATE OF OKLAHOMA,
Oklahoma County, ss:

Arta Simpson, of lawful age, being duly sworn on oath, deposes and says: That she is the Principal Clerk of the Daily Law Journal-Record, a newspaper of general circulation in the State of Oklahoma and printed at Oklahoma City, Oklahoma. That the attached notice was published in

all regular editions of said newspaper on the following dates: June 26, 1946.

(S.) Arta Simpson.

Subscribed and sworn to before me this 26th day of June, 1946. (S.) Kathryn Altmiller, Notary Public.

My Commission expires Jan. 18, 1950. (Seal.)
Publishers Fee . . . $5.50

[fol. 1069] (30258)

ORDER ALLOWING INTERVENTION

Cause C.D. No. 1054

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent

Now on this the 19th day of June, 1946, the Corporation Commission, being in executive session, the application to intervene filed herein on this date by the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, comes on for consideration.

It appears that the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma is a substantial owner of oil and gas producing properties located in the Guymon-Hugoton Field in Texas County, Oklahoma, and that they have an interest in the outcome of this proceeding.

The Commission is therefore of the opinion that the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma should be allowed to intervene and participate in the proceedings.

ORDER

It is therefore ordered that the application to intervene filed herein by the State of Oklahoma on Relation of the [fol. 1070] Commissioners of the Land Office of the State of

Oklahoma be granted, and the applicant be permitted to participate in the proceedings.

It is further ordered that notice of the application and the hearing thereof be given as required by law.

Done and performed this 19th day of June, 1946.

Corporation Commission of Oklahoma.

Reford Bond, Chairman; Ray O Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner. (Seal.)

Attest: Tom McMurray, Secretary.

6-26-50

[fol. 1071] EXHIBIT No. 40

COOLEY BROTHERS

C. G. Cooley — Coal and Metal Minings — L. M. Cooley

Lehigh, Oklahoma

July 5, 1946.

W. D. McBee, Oil & Gas Attorney, State School Land Department, Oklahoma City, Oklahoma

DEAR SIR:

For your information, the price of lump coal at the present time and under present conditions, F.O.B. Coalgate, Oklahoma is $5.31, subject to change without notice.

All of our carload sales are handled through our selling agency, Southern Coal Company, P. O. Box 1185, Dallas, Texas and the above is the latest price given to us by them.

The approximate number of B.T.U.'s per pound is 11,500.

It is understood that this is not a quotation from Cooley Brothers to you.

Very truly yours, Cooley Brothers, by Morgan Williams.

MRW:ss.

[fol. 1072] EXHIBIT No. 41

THE McALESTER FUEL COMPANY.

McAlester, Okla.

July 5, 1946.

Mr. W. D. McBee, Oil & Gas Attorney, State School Land Department, Oklahoma City, Oklahoma

DEAR SIR:

For your information, price on McAlester lump coal from underground mines at the present time, f.o.b. mines McAlester, Oklahoma or other shipping points in the McAlester District is $7.35 per ton subject to change without notice.

The approximate number of B.T.U.'s per pound is 13,500.

It is understood that this is not a quotation but is the present market price.

Very truly yours, The McAlester Fuel Company,
J. E. Mountjoy, General Sales Manager.

[fol. 1073] EXHIBIT No. 42

THE McALESTER FUEL COMPANY

McAlester, Okla.

July 5, 1946.

Mr. W. D. McBee, Oil & Gas Attorney, State School Land Department, Oklahoma City, Oklahoma

DEAR SIR:

For your information, price on Henryetta lump coal, from underground mines at the present time, f.o.b. mines Henryetta, Oklahoma or other shipping points in the Henryetta District is $5.35 per ton, subject to change without notice.

The approximate number of B.T.U.'s per pound is 13,900.

It is understood that this is not a quotation but is the present market price.

Very truly yours, The McAlester Fuel Company.
By J. E. Mountjoy, General Sales Manager.

JEM:em.

LIBRARY
SUPREME COURT, U.S.

Vol. II

TRANSCRIPT OF RECORD

(Pages 577 to 969)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 73

PHILLIPS PETROLEUM COMPANY, APPELLANT,

vs.

THE STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY

No. 153

CITIES SERVICE GAS COMPANY, APPELLANT,

vs.

PEERLESS OIL AND GAS COMPANY, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED MAY 15, 1950.

JUNE 27, 1950

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 73

PHILLIPS PETROLEUM COMPANY, APPELLANT,

vs.

THE STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY

No. 153

CITIES SERVICE GAS COMPANY, APPELLANT,

vs.

PEERLESS OIL AND GAS COMPANY, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEALS FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

VOL. II

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JUDD & DETWEILER, (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 15, 1950

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[fol. 1074] EXHIBIT No. 43

Phone 807F2

DUNN FUEL & LUMBER CO.

Producers of Coalgate Coal

Coalgate, Oklahoma,
July 5, 1946.

TO WHOM IT MAY CONCERN:

At present time and under present conditions price of lump coal F O B Coalgate loaded on cars is $5.31 subject to change without notice.

All car lot sales handled through Southern Coal Co., Southwestern Life Bldg., Dallas, Texas.

Analysis per army report April 22, 1944, is 12292 B.T.U.'s per pound of 2000 lbs.

Dunn Fuel & Lbr. Co., by Leon Davis.

[fol. 1075] EXHIBIT 44

In the marking of Exhibits in this case the number "44" was not used. In anticipation of an Exhibit "44" being offered the number "44" was stamped on the Exhibit Folder, but no Exhibit "44" was offered or marked during the "Take" of the Reporter on duty at the time. As the number "44" appeared on the Exhibit Folder the Reporter next on duty marked the next exhibit offered "Exhibit 45", this left no Exhibit 44 in the record.

EXHIBIT 45

Exhibit 45 is the identical instrument which is attached to the Application to Intervene, as Exhibit 1 to said Application, and, as same has been heretofore copied and indexed, same is not again copied here but reference to the index is made.

Exhibit 46

Under the provisions of the Stipulation entered into among counsel for the parties hereto, only Section 4, of Exhibit 46 is made part of this record. Exhibit 46 is entitled as follows:

Department of the Interior U. S. Geological Survey Operating Regulations to Govern the Production of Oil and Gas Under the Act of February 25, 1920 (41 Stat. 437); Act of June 4, 1920, (41 Stat. 812); and Act of March 4, 1923, (42 Stat. 1448; and under Special agreement by the United States—Revised and Approved July 1, 1926.

Section 4, which under the provisions of said Stipulation is made a part of this record, is as follows:

[fol. 1076] The State's Royalty on Casinghead Gas

On July 1, 1926, the Secretary of the Interior of the United States promulgated Operating Rules and Regulations for the purpose of governing the production and marketing of oil and natural gas on the public lands of the United States. (vol. 52, L.D., page 1.)

On March 29, 1927, the Commissioners of the Land Office adopted the Rules and Regulations of the Department of the Interior of the United States, insofar as same related to or affected the production, contracts, policy and sale of natural gas, casinghead gas and hydrocarbon substances produced on lands of the State of Oklahoma.

The applicable portions of said rules and regulations appear in Section 4, which are as follows:

[fol. 1077] Section 4. Natural-Gas and Gasoline Royalties,

(a) Measurement of Natural Gas

The term "natural gas" as used in those regulations shall be interpreted to mean either gas from gas well or so-called "casinghood gas" or "trapped gas" produced by oil wells. The term "dry natural gas" applies to natural gas containing so little gasoline that its extraction is not commercially feasible or to natural gas from which gasoline has already been extracted.

All gas subject to royalty shall be measured by motors (preferably of the orifico-motor type), approved by the supervisor or his representative and installed at the ex-

pense of the lessee at such place as may be agreed to by the supervisor or his representative. The standard of pressure in all measurements of gas sold or subject to royalty shall be 10 ounces above an atmospheric pressure of 14.4 pounds to the square inch, regardless of the atmospheric pressure at the point of measurement, and the standard of temperature shall be 60 degrees Fahrenheit. All measurements of gas shall be reduced by computation to those standards, no matter what may have been the pressure and temperature at which the gas was actually measured.

(b) Payment of Royalties

Natural-gas and natural-gas gasoline royalties that are payable in value shall be paid to the registor of the United States land office for the district in which the leased land is situated. Royalties shall be due and payable on or before the 15th day of each calendar month for all natural gas and natural-gas gasoline produced during the previous calendar month.

[fol. 1078] The royalties on natural gas and natural-gas gasoline from permits and leased under the act of February 25, 1920, the act of June 4, 1920, the act of March 3, 1923, and special agreement by the United States, unless otherwise specified in the permit, lease, or special agreement, shall be computed as stated in the following paragraph- c and d.

(c) Royalties on Natural Gas

The royalty on natural gas, whether gas from which the natural-gas gasoline has been extracted or otherwise, shall be 12½ per cent of the value of the gas as fixed by the Secretary of the Interior where the average production per day for the calendar month is less than 3,000,000 cubic feet, and 16⅔ per cent where the average daily production is 3,000,000 cubic foot or more.

In the sale of dry natural gas there is but one commodity involved and on it the Government collects a royalty of 12½ per cent, or 16⅔ per cent, according to the average daily production. Those royalties are due regardless of whether the gas is produced as dry gas or whether it is dry residual gas from a plant after natural-gas gasoline has been extracted.

In general, where natural gas is delivered or sold for purposes of extracting gasoline, two separate commodities are involved—the natural-gas gasoline and the dry residual gas. If, however, the lessee receives a higher price for such natural gas as a single commodity than the combined value of the two commodities, the natural-gas gasoline and the dry residual gas, as fixed by the Secretary of the Inferior, the Government royalty shall be computed on natural gas alone and at the highe- price received therefor by the lessee.

[fol. 1079] (d) Royalty on Natural-gas gasoline

A royalty of 16⅔ per cent shall be paid on the value as fixed by the Secretary of the Interior of one-third of all natural-gas gasoline extracted and sold from the natural gas produced on the leased land.

Natural-gas gasoline (also known as casinghead gasoline) is manufactured product. The value of this product is contingent upon the value of the raw material and the cost of its manufacture. The Government does not wish to collect royalty on that part of the value which is derived from the cost of manufacturing, inasmuch as the Government's equity is confined to the value of the raw material involved. In computing royalty on natural-gas gasoline the value of the raw gasoline in the natural gas as produced is assured to be one-third of the value of the marketable natural-gas gasoline extracted from such gas, the remaining two-thirds being allowed to the lessee for the cost of manufacture. Thus the Government collects 16⅔ per cent of one-third of the market value as its royalty share of the natural-gas gasoline produced (or in effect one-eighteenth of the market value).

If the lessee derives revecnue on natural gas from two sources, from natural-gas gasoline and dry (residual) gas sold, the Government will normally collect a royalty on the two products. Therefore, if there is a market for the dry residual gas from the natural-gas gasoline plant, a royalty on this dry gas as stipulated under headings (b) and (c) of this section must be paid to the Government.

The present policy of the department is to allow use of a reasonable amount of dry gas for plant operatio . subject to the advice and direction of the supervisor or his representative. The Department will attempt to arrive at an

[fol. 1080] equitable basis of settlement in determining what constitutes a "reasonable amount". Moreover, the department will investigate plants where gas is being wasted.

Example of method for computing Natural-gas gasoline Royalties.

Assume—

That the value of natural-gas gasoline is 18 cents a gallon,

That three gallons of gasoline is recovered from each 1000 cubic feet of natural gas treated.

Then—

The Government takes its royalty on one-third of three gallons (per 1000 cubic feet of gas), or one gallon, having a value of 18 cents.

The Government's royalty on gasoline in this case is 1/6 (equals 16⅔ per cent).

X 1 (gallon) X 18 cents equals 3 cents (in each 1000 cubic feet of natural gas treated).

(e) not applicable

(f) Royalty on Drip Gasoline

The royalty on all drip gasoline recovered and sold from gas produced on the leased lands shall be the same as that required for natural-gas gasoline manufactured within the same district.

(g) Determination of Gasoline Content

Tests to determine the gasoline content of natural gas delivered to plants manufacturing gasoline are required to check plant efficiency and to obtain an equitable basis for allocating the gasoline output of any plant to the several sources from which the natural gas treated is derived. No gasoline content of the natural gas delivered to each gasoline plant treating gas derived from leased lands shall be determined by methods approved by the supervisor [fol. 1081] and under his supervision on the basis of periodical field tests made at each meter.

(h) Quantity Basis for Computing Gasoline Royalty

The primary quantity basis for computing monthly royalties on natural-gas gasoline is the monthly net output of the plant at which the gasoline is manufactured, "net output" being defined as the natural-gas gasoline

that the plant is able to manufacture and sell, less a deduction of any portion thereof derived from nap-tha or other blending materials.

(a) If the net output of a plant is derived from natural gas obtained on only one leasehold the quantity of gasoline on which computation of royalty for the lease are based is the net output of the plant.

(b) If the net output of a plant is derived from natural gas obtained from several sources of gas of uniform gasoline content, the proportion of not output allocable to each lease as a basis for computing royalty will be determined by dividing the amount of natural gas delivered to the plant from the leasehold the total amount of natural gas delivered to the plant from *from* all sources.

(c) If, however, the net output of a plant is derived from natural gas obtained from several sources of gas of diverse gasoline content, the proportion of net output allocable to each lease as a basis for computing royalty will be determined by multiplying the amount of natural gas delivered to the plant from the leasehold by the gasoline content of the gas and dividing the arithmetical product thus obtained by the sum of the arithmetical products similarly obtained for all separate sources of natural gas treated at the plant.

[fol. 1082] EXHIBIT 47

Meeting of the Commissioners of the Land Office of the State of Oklahoma, held in the office of the secretary, at Oklahoma City, Oklahoma, Tuesday, March 29th, 1927, at 2:00 P.M.

Present: Hon. Henry S. Johnston, Governor and Chairman; Hon. Graves Leeper, Secretary of State; Hon. M. A. Nash, State Supt. of Public Instruction; Hon. A. S. J. Shaw, State Auditor.

Absent: Hon. Harry B. Cordell, Pres. State Board of Agriculture.

Among other things, the following proceeding was had:

Re: Oil and Gas: (Contract Sale of Gas). It was moved by Mr. Shaw and seconded by Mr. Leeper that it be the rule and policy of this Board, that it approve the sale of gas from gas or oil wells and casinghead gas, the prices,

terms and contract of which shall be based on the schedule of the Department of the Interior of the United States.

All vote Aye: Motion prevailed.

I, Walter Marlin, the duly appointed, qualified and acting Secretary to the Commissioners of the Land Office, do hereby certify that the above is a true and exact copy of the minutes of a proceeding had before the Commissioners of the Land Office on the 29th day of March, 1927, as shown by the minutes of said meeting. Dated this 9th day of July, 1946.

(Signed) Walter Marlin, Secretary to the Commissioners of the Land Office of the State of Oklahoma. (Seal of Commissioners of Land Office, State of Oklahoma.)

[fol. 1083] EXHIBIT 48 is a letter dated November 20, 1945, addressed to "Mr. William D. Weidlein, President Mid-Continent Gas Transmission Co., 1910 Rand Tower, Minneapolis 2, Minnesota", signed "Otis & Co", by Wm. R. Daley,—this exhibit is copied into the record at the point introduced, page 331, therefore is not copied here.

EXHIBIT 49

EXHIBIT 50

EXHIBIT 51

EXHIBIT 52—Exhibit 49 is described in the record as "Papers having to do with the qualifications of the Empire Natural Gas Company to do business in the State of Oklahoma",—

Exhibit 50 is a document "which reflects the change of the name from Empire Gas Company to Cities Service Gas Company",—

Exhibit 51 is "Amended Articles of Incorporation of Cities Service Gas Company",—

Exhibit 52 is "Further Amended Articles of Incorporation of Cities Service Gas Company", each of these exhibits being records of the Office of Secretary of State, and, pursuant to admissions and statements of counsel made at the time of the offer of said exhibits, shown at pages 333-336 of this record the said exhibits, 49, 50, 51 and 52 were withdrawn and are not made a part of this record.

EXHIBIT 53—This Exhibit has been hereinbefore copied, at page- 239-240 of this record, therefore is not copied at this point. (See pg. 339 of Record.)

95506

J. L. King
EXHIBIT 54
Official Reporter

J. L. King
Exhibit 54
Official Reporter

EXHIBIT 54

The State of Oklahoma

OIL AND GAS MINING LEASE

THIS INDENTURE OF LEASE, Made and entered into in duplicate, on this the .....day of .....

A. D., 19....., by and between The Commissioners of the Land Office of the State of Oklahoma, acting for and in behalf

of the State of Oklahoma, parties of the first part, hereinafter designated as lessor, and .....

.....

.....

party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Constitution and Laws of the State of Oklahoma, relating to the segregation of the oil and gas deposits and the leasing thereof on school and other public lands belonging to the State of Oklahoma, WITNESSETH:

1. The lessor, for and in consideration of .....

($.....) DOLLARS, the receipt whereof is hereby acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained and hereby agreed to be paid, observed and performed by the lessee, and his lawful assigns:

P. 584 is blank

Following exposure contains the 2nd part of this page

does hereby demise, grant, lease and let unto the lessee for the term of five years from the date hereof, and as long thereafter as oil or gas or either of them is produced in paying quantities, all the oil deposits and natural gas in or under the following described tract of land lying and being within the County of _____, in the State of Oklahoma, to-wit:

and containing _____ acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing and removing such oil, [redacted] and natural gas. Also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, except the private wells or ponds of the surface owner or lessee, and also the right to use, free of cost, oil and natural gas or fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to deliver or cause to be delivered to The Commissioners of the Land Office of the State of Oklahoma, or their successors, a royalty, of one-eighth part of the oil, [redacted] or gas produced from the leased premises or in lieu thereof, pay to the State the market value of said royalty interest, as the Commissioners may elect. All oil [redacted] and gas due to the State under this contract, shall be delivered, by the lessee herein, free of cost, into pipe lines, tanks or cars, or settled or paid for before removing same from the premises if handled in any other way. The lessee shall furnish to the lessor certified copies of gauge tickets, sales, shipments and amount of gross production, at their offices in Oklahoma City. Gas to be metered [redacted] t. according to Federal Departmental Schedule and Regulations.

3. The lessee hereby agrees to deliver, or cause to be delivered to the Commissioners of the Land Office, of said State, a royalty of one-eighth of all casinghead or drip, gas or gasoline, [redacted] gas, produced or extracted from any gas produced from any well on said premises, or in lieu thereof, pay the State the market value of said royalty interest as the Commissioners of the Land Office may elect. The term "casinghead gas" shall be construed to mean gas which is produced from any sand which contains any liquid hydrocarbon products

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on the land covered by this lease, and shall drill a sufficient number of wells to offset the wells upon adjoining contiguous premises, said offset wells to be commenced within ten days after completion of any producing well upon such adjoining contiguous premises unless a different time is prescribed by notice in writing from the lessor, and be prosecuted diligently and continuously until completed; and the said lessee shall operate the leased premises for oil and gas to the same extent as individual and corporate premises are being operated within the general oil and gas fields where such land is located, and failure to faithfully comply with this provision shall be cause for forfeiture of this lease to the State.

(over)

1084

585

5. At least one well producing oil or gas in paying quantities shall be drilled and completed within one year from the date hereof, or failing so to do the lessee shall pay to the lessor for each whole year the completion of such a well is delayed, for not to exceed five years from the date hereof, in addition to the other consideration named herein, rental of One ($1.00) Dollar per acre, payable annually, in advance, and if the lessee shall fail to drill at least one such well within any such yearly period, and shall fail to surrender this lease on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken as conclusively evidencing the election and covenant of the lessee to pay the rental of One ($1.00) Dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen (15) days after it becomes due at the end of any yearly period during which a well has not been completed as herein provided, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation thereof, but such cancellation shall not in any wise operate to release or relieve the lessee from the covenants and obligations to pay such rental or any other accrued obligation. It being understood that the completion of one well producing oil or gas in paying quantities during the life of this lease, shall relieve the lessee of all future liability for said $1.00 per acre hereunder, but the lessee shall nevertheless remain obligated to drill an offset, or necessary offsets, and other wells necessary to the proper development and operation of said lease as herein otherwise provided, [redacted]; and provided further that unless a producing well [redacted] of oil or gas is completed on the aboye described premises within five years from the date hereof this lease shall be void.

6. The lessee shall carry on the development and operation in a workmanlike manner; commit no waste on said land, and suffer none to be committed upon the portion in his occupancy or use; take good care of the same, and promptly surrender and return the premises upon the termination of this lease to the lessor, or to whomsoever shall be lawfully entitled thereto, unavoidable casualty only excepted.

7. All tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, shall remain the property of the lessee, and may be removed at any time prior to or at the termination of the lease by forfeiture or otherwise; and the lessee shall not permit any nuisance to be maintained on the premises; and shall not use said premises for any purposes than those authorized in the lease; and before abandoning any well, shall securely plug the same so as to effectually shut off all water from the oil bearing stratum, or in the manner required by the laws of the State of Oklahoma.

8. The lessees shall keep an accurate account of all oil and gas mining operations, including a log of each well drilled, duly sworn to by the contractor or driller, which shall be filed with the Secretary to The Commissioners of the Land Office within thirty days after said well is completed. Accurate and reliable information concerning all wells and their operation and management shall be furnished to The Commissioners of the Land Office or their representatives upon demand. The said lessee shall also keep an accurate account showing the sales, prices, dates, purchases, and the whole amount of oil and gas mined or removed, and all sums due as royalties shall be a lien on the implements, tools and movable machinery or personal chattels used in operating said property, and also upon all the unsold oil and gas obtained from the land herein leased as security for the payment of said royalties.

9. The lessee shall be liable to the surface owner or surface lessee for all damages or loss accruing to the surface interests in said land, and to all crops and improvements, thereupon and appurtenances and hereditaments thereunto belonging by reason of the oil and gas mining operations hereunder, and in the event the amount of such damage cannot be agreed upon by the lessee hereof and such surface owner or lessee, then the amount of such damage shall be determined as is or may be provided by law. The lessee hereof further agrees to pay all such damages within ten days after the amount thereof is determined, and the amount of such damages may be recovered from the lessee hereof and his sureties upon the bond given to secure the faithful performance of this lease.

Following exposure contains
the 2nd part of this page

9. The lessee shall be liable to the surface owner or surface lessee for all damages or loss accruing to the surface interests in said land, and to all crops and improvements, thereupon and appurtenances and hereditaments thereunto belonging by reason of the oil and gas mining operations hereunder, and in the event the amount of such damage cannot be agreed upon by the lessee hereof and such surface owner or lessee, then the amount of such damage shall be determined as is or may be provided by law. The lessee hereof further agrees to pay all such damages within ten days after the amount thereof is determined, and the amount of such damages may be recovered from the lessee hereof and his sureties upon the bond given to secure the faithful performance of this lease.

10. This lease shall be subject to the constitution and laws of the State of Oklahoma and the rules and regulations of The Commissioners of the Land Office now or hereafter in force relative to such leases; all of which are made a part and condition of this lease; Provided, That no regulations made after the execution of this lease affecting either the length of the term hereof, the rate of royalty, or payment hereunder or the assignment hereof, shall operate to affect the terms and conditions of this lease.

11. No transfer or assignment of this lease or any part thereof, shall be valid or convey any right in the assignee without the consent in writing of The Commissioners of the Land Office; and such assignee shall furnish a bond to the satisfaction of The Commissioners of the Land Office, conditioned for the faithful performance of the covenants and conditions of this lease, and pay an assignment fee of Five Dollars.

12. Before this lease shall be in force and effect the lessee shall give a good and sufficient bond in the sum of .....

.....

($ .....) Dollars, to be approved by the Commissioners of the Land Office, for the faithful performance of this lease.

13. Upon the violation of any of the substantial terms or conditions of this lease, The Commissioners of the Land Office shall have the right at any time after hearing upon ten days notice, given by registered mail to the last known address of such lessee, or by posting notice in writing in a conspicuous place upon the premises, specifying the terms or conditions violated, to declare this lease null and void; and the said Commissioners for and on behalf of the State of Oklahoma, shall be entitled to recover from the lessee's bondsmen, all rents, royalties, charges, claims of every kind and nature due and owing and accruing and arising out of and by reason of this lease, on failure to comply with the provisions thereof, and the lessors shall be entitled and autnorized to take immediate possession of the land.

14. It is further agreed that for any refinery of crude oil and its products and bi-products, owned and controlled by the State of Oklahoma, the State shall have the preference right to purchase and receive the output from said premises at the market price thereof: Provided; that this clause shall not prevent the lessee from selling the output of said leases to any person, firm or corporation whatsoever until notice in writing from The Commissioners of the Land Office shall be served on the lessee that the State is ready to take such oil and gas or either of them, and all sales of oil and gas or either of them under this proviso shall be valid and binding.

15. The lessee may at any time hereafter surrender and wholly terminate this lease upon payment of the rentals and othe. liabilities then accrued and due hereunder, and may exercise such right by filing a formal relinquishment and release of the said lease with the Secretary to The Commissioners of the Land Office: Provided, that if such lease has been recorded by causing the release thereof to be filed and recorded in the proper recording office, and upon a compliance with these requirements such lessee shall thereby be relieved from liability for rental thereafter accruing.

16. The surface owner or lessee of said premises shall have gas free of cost from any well on said premises for domestic use thereon by making his own connection with the well.

IN WITNESS WHEREOF, the parties hereunto subscribed their signatures on the day and year first above written.

ATTEST:

THE COMMISSIONERS OF THE LAND OFFICE
OF THE STATE OF OKLAHOMA

By .....
Governor and ..... Chairman

.....
Secretary to the Commissioners of the Land Office

ATTEST:

.....
Lessee.

.....
Secretary.

.....

STATE OF OKLAHOMA,
} ss.
OKLAHOMA COUNTY,

Personally appeared before me, the undersigned Notary Public, within and for said County and State .....

....., to me known to be the person who subscribed the name of The Commissioners of the Land Office of the State of Oklahoma, to the foregoing instrument, as its ..... Chairman, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as free and voluntary act and deed of such Commissioners of the Land Office, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this ..... day of

....., 19....

My Commission expires .....

.....
Notary Public.

Following exposure contains
the 2nd part of this page

My Commission expires .....

Notary Public.

ACKNOWLEDGEMENT FOR INDIVIDUAL

STATE OF OKLAHOMA, }
..... COUNTY, } ss.

Personally appeared before me, the undersigned Notary Public, within and for said County and State .....

....., to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this ..... day of

....., 19.....

My Commission expires .....

Notary Public.

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF OKLAHOMA, }
..... COUNTY, } ss.

Personally appeared before me, the undersigned Notary Public, within and for said County and State .....

....., to me known to be the identical person who signed the name of the

.....

to the above and foregoing instrument as its ..... President, and acknowledged that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of the said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this ..... day of

....., 19.....

My Commission expires .....

Notary Public.

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STATE OF OKLAHOMA

Oil and Gas Mining Lease

FROM

Commissioners of The Land Office

OF THE

State of Oklahoma

TO

1084C

[fol. 1085] EXHIBIT No. 55

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

CD 1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent

STIPULATION

It is agreed that of June 20, 1946, Peerless Oil and Gas Company sent to Cities Service Gas Company and the latter in the due course of the mails received a letter, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

That soon thereafter Cities Service Gas Company orally accepted said offer on the agreed condition and supplemention that current gas measurements be in accordance with its customary procedure until hereafter lawfully changed, and that Cities Service Gas Company does not waive any right of objection to the jurisdiction or power of the Corporation Commission of Oklahoma to make any order concerning the taking of, or the price of, or the basis of measurement of the natural gas so taken or any gas taken from said field.

With reference to procuring necessary pipe and other equipment for Peerless Oil and Gas Company to use, mutually satisfactory measures are now being taken. Parties have agreed upon points for Peerless Oil and Gas Company to connect with Cities Service Gas Company's line.

[fol. 1086] Peerless Oil and Gas Company will proceed as rapidly as possible to construct its lines to said points of connection and Cities Service Gas Company will promptly connect its line with said lines of Peerless Oil and Gas Company and take natural gas from said wells.

Dated July 10, 1946.

Peerless Oil and Gas Company, by Earl Pruet, Its Attorney. Cities Service Gas Company, by R. E. Cullison, Its Attorney.

(EXHIBIT "A")

copy Richardson, Shartel, Cochran & Pruet
1133 First National Building
Oklahoma City 2, Oklahoma

June 20, 1946.

R. E. Cullison, c/o Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

In Re: Peerless Oil and Gas Company vs. Cities Service Gas Company.

DEAR JUDGE CULLISON:

Referring to our recent conversation, you advised that your company is willing that we connect the two wells, the one involved in the above suit and the Fisher well located on adjoining property, with your pipe line. Your company will begin paying for the same at the rate of 4½¢ m.c.f. [fol. 1087] delivered into your pipe line, without prejudice to a final determination of measurement and price now pending before the Corporation Commission in the above entitled cause, and in the event the Commission fixes a price higher than 4½¢ m.c.f., or at a different measurement, and such order is finally upheld, Cities Service will thereafter pay to Peerless the difference.

We have discussed this matter with our client, and such an arrangement is entirely agreeable; however, while the above matter has been pending in negotiation and suit, Peerless used all available pipe in connecting other wells to Cabot Carbon company's lines. Peerless has pipe on order at this time and will proceed to connect as soon as pipe is available. In the meantime, it is thought that your company might have the necessary pipe available, of which Peerless would buy from your company or agree to replace later.

Please advise company's wishes in this matter.

Sincerely yours, Richardson, Shartel, Cochran & Pruet, by (S.) Earl Pruet.

EP:le.

cc: Mr. Vernon Taylor, Tionesta, Pa.

[fol. 1088] EXHIBIT 56

Read March 15, 1944. III—Ind. Basin Chapter, American Petroleum Inst.

History of Proration and Conservation in Oklahoma

By Walker T. Pound, Oil and Gas Conservation Officer, Oklahoma Corporation Commission

Any record of proration and conservation of crude petroleum and natural gas must of necessity record the life and history of the petroleum industry in the State of Oklahoma. All of the states which produce oil, and some which do not, have contributed to the development of the present theory of conservation. Some of these contributions were in the form of legislation, some in the form of important court decisions, and some in the form of orders issued by regulatory bodies. Perhaps the most important contributions have been made through research, experiment, and knowledge gained by operators from practical application of untried engineering and conservation principles. The fact remains, however, that the pioneer in this work at least as to restriction to market demand, was the State of Oklahoma. And for the purpose of this discussion we will confine ourselves principally to events occurring within that State.

The first known record of oil produced in what is now Oklahoma, other than through its numerous surface seepages, was in the Chelsea area of Rogers County—Northeastern Oklahoma—in 1889. A few small wells averaging about three barrels were completed at depths of approximately one hundred fifty feet. Several areas claim the distinction of having produced the first oil in commercial [fol. 1089] quantities, but it is rather generally agreed that the first commercial producer was the Cudahy Okl Company #1 Johnstone, completed in 1899, in what is now Johnstone Park in the City of Bartlesville, Oklahoma. This well is reportedly still capable of producing oil.

The records of the United States Bureau of Mines on Oklahoma production start in 1891 and reflect a total production of thirty barrels for that year. As of January 1, 1944, the state's total accumulated production was in round figures five billion two hundred million barrels. It's

interesting that of this amount some four hundred fifty million barrels, or approximately 9% was produced from the Oklahoma City Wilcox and many millions of barrels still remain therein. Forty-four of the state's seven counties now produce oil from some fifty-two thousand wells.

Proration, or to use the broader term conservation by which it has in recent years been absorbed and in fact to which it was actually changed by an act of the Oklahoma Legislature in 1935, appears to have evolved through four main stages. These periods in the evolution of conservation when seen in review present an astonishing picture. It is so bizarre in spots as to be comparable only to the gold rushes of the last century, and yet in its final aspect presenting an industry orderly and wise beyond the point reached by any other industry over a like period of time. [fol. 1090] The first of these periods probably begins with the discovery and development of the famous Glenn Pool near Sapulpa in 1905. There immediately developed in this Pool the bitterest drilling and production campaign of territorial days. What is now Oklahoma was then two separate territories—Oklahoma Territory, whose government consisted of a territorial legislature elected by the people, and a Governor and Judiciary appointed by the President, and Indian Territory which was occupied principally by the Five Civilized Tribes (Chickasaw, Choctaw, Cherokee, Seminole and Creeks) each of which had its own government. The citizens of Indian Territory were wards of the Federal Government insofar as the exploitation of their minerals was concerned.

The Glenn Pool, lying within the Creek Nation, therefore became subject to rules and regulations prescribed by the Secretary of the Interior. These rules dealt primarily with the payment of royalties, and possibly because of lack of knowledge no rules were issued for the prevention of waste, or the protection of correlative rights. Surface waste of oil soon reached staggering proportions. The Pool covered a large area and the wells were large producers of high gravity oil.

The so-called integrated or pope line companies, have their own wells, pipe lines, storage facilities and refineries, proceeded to take care of themselves, which they had every right to do under the existing rule of capture. The small, or non-integrated operator was faced with a dilemma. Hav- [fol. 1091] ing no market or storage, and justifiably resent-

ing having his minerals drained from under him, he decided to produce his wells regardless. Some built earthen storage by damming up creeks and ravines. Then came the rains. The result was the dikes were washed out, or the oil was floated off on top of the water. Other operators defiantly taking the position that "if I can't have it, no one can" literally turned their production into the creekbeds without taking the trouble to build dikes. It was afterwards said, at a hearing before the Corporation Commission in 1915, that "more oil has run down the creeks from the Glenn Pool than was ever produced in the State of Illinois". The price of crude dropped from above a dollar a barrel to less than 30 cents. The state's marketed production averaged twelve thousand barrels per day.

At the height of this chaotic condition, in November, 1907, the State of Oklahoma, formed from Indian Territory on the East and South, and Oklahoma Territory on the West and North, was admitted to the Union. The Constitution of the infant state created a Corporation Commission composed of three elective members, the term of office to be six years, with one member elected each two years. Under the Constitution this body was granted extraordinary powers—legislative, executive and judicial, and probably greater authority than that given any similar body before or since. The authors of the Oklahoma Constitution had no thought that the Corporation Commission should control the production of oil and gas. Because of that Commission's broad powers, however, the petroleum industry later induced legislatures to place such control in that body. [fol. 1092] The success of conservation in Oklahoma is at least partially attributable to this fact. The laws enacted by the territorial legislature became, subject to the Constitution, the laws of the new state. An act of the 1905 territorial legislature provided for the proper casing and plugging of wells, and prohibited the blowing of gas into the air for more than ten days except that—"this section shall not apply to any well . . . when the production of oil has a greater value than the production of gas therefrom".

The only important legislation covering oil or gas enacted by the first state legislature in 1907 was a bill attempting to retain within the state for the development of local industries all of the gas produced therein. This statute was later declared unconstitutional by the United States Supreme Court.

The 1909 Legislature, doubtless having in mind the evils of the Glenn Pool, enacted a statute which made pipe lines common carriers and common purchasers without "discrimination in favor of one producer as against another". This is the first statute of its kind enacted by any state, and is the first notable experiment in proration legislation.

A similar act relating to the production and transportation of natural gas was passed in 1913. This act had plenty of teeth, providing among other things that anyone taking gas in violation of its provisions should be guilty of grand larceny, and upon conviction should be sentenced to the penitentiary for not to exceed five years. Because of this [fol. 1093] provision, it was often referred to as the "Larceny Act".

At about this time were discovered almost simultaneously the "World's two greatest oil fields—Cushing and Healdton". With the development of these pools, and a daily production already averaging one hundred fifty thousand barrels, pipe line facilities of the three major buyers were totally inadequate to handle the resulting deluge. Ten million barrels of crude were stored in steel and earthen tanks within the state. In February, 1914, the posted price of crude was $1.05 per barrel; by May 1st it had dropped to seventy-five cents, and further reductions were threatened. In the meantime, an application filed with the Corporation Commission by the Attorney General of the State accused the purchasers in the Cushing and Healdton Fields of non-ratable running of oil in violation of the Common Purchaser Statute. An agreement was reached between the purchasers and producers in the two pools, and based upon these agreements, Orders No. 813 and 814, covering the two pools, were issued by the Commission on May 7, 1914. Also agreed to was the appointment by the Commission of an inspector whose salary was to be paid by the purchasers, but whose authority was mostly limited to suggestions and recommendations. Bear in mind that these orders, and probably the statute, proposed only to accomplish the ratable purchase and transportation of crude oil *after* it reached the surface. No restraint of production was attempted. The result—pipe line proration. The man with the greatest above-ground storage was entitled to sell the most oil. Conditions were, therefore, improved but little, though the two orders did mark the second step toward ratable taking.

[fol. 1094] The Cushing operators, disappointed in the results accomplished, now applied to the Commission for relief in a different form. They asked that pipe-lines be relieved from taking oil from any new wells completed during the next four months. This would, of course restrict actual production, it was hoped, to market demand, and it was so ordered on July 1, 1914, in Order #829, the first order issued which had not been agreed to. In support of its order limiting the market to existing wells, the Commission made the following interesting finding:

> "It should be remembered that these wells flow from their own pressure and cannot be stopped without danger of ruining the well."

and again:

> "The Commission would not be justified in acting upon the suggestion or request of this kind except to prevent waste of a product which the public has need for and must use. If a forest or timber were being ruthlessly and carelessly destroyed by fire or sawed down and permitted to float down rivers, the public would find some was of stopping such destruction."

The Order concluded with this final admonition:

> "Inasmuch as Providence has smiled so bountifully upon the producers in the Cushing Field, we believe that they can well afford to sacrifice some personal advantages which, to some extent may have been acquired by their own diligence and conservatism, in order that this great industry might not fall into contempt by reason of the destructive production of crude petroleum".

[fol. 1095] The Commission appointed a committee of five operators in the pool to assist its Unpire in handling field problems, and thereby inaugurated a custom which still exists. For today it is the custom of the Oklahoma Commission and its Conservation Department to call on the operators for advice and suggestions in the handling of problems whether local or statewide in scope.

The next step of the Oklahoma Commission in the regulation of the petroleum industry was perhaps the most interesting of all. The Attorney General of the State filed an application, asking the Commission to fix the price of oil. A hearing was held and all phases of the regulation

and restriction of production to market demand were developed. A lengthy and detailed order #846 was issued on September 22, 1914. This order had two main features. It forebade the production of crude oil in excess of the reasonable market demand and it directed purchasers to pay not less than sixty-five cents per barrel for crude until further ordered by the Commission, basing its authority for such action on an anti-trust statute. The Commission was not timid about assuming jurisdiction as indicated by the following findings:

> "The rule usually invoked by lower courts when in doubt as to law is to give the public the benefit of that doubt and let the Supreme Court finally determine what the law is . . .".

The Commission found that the pipe line companies exercised what amounted to a virtual monopoly over the purchase of crude oil, a commodity which the public must use, and the order said:

> [fol. 1096] "No more apt illustration can be afforded than that presented by an oil pipe line penetrating an oil field and furnishing the only practical market for the crude petroleum which has been brought to the surface under conditions heretofore described. Under such conditions of sale of crude petroleum no contractual relations actually exist as are contemplated by the Constitution of the United States. . . . A sale or taking under these conditions may properly be characterized as a species of extortion."

Quoting further:

> "There are ten million barrels of oil now stored in the Cushing Field, the deterioration of which will range from ten to twenty-five percent the first year, hence this is from two to two and a half million barrels of oil destroyed by this process. Many barrels flow down the creek and are destroyed in various ways. Cannot the state come in and stop this waste of a product which it must use? When a barrel of oil is destroyed it can never be reproduced. . . .
>
> "Shall the public sit idly by and see this commodity destroyed, not knowing but that this is the last great oil field on this continent, ..."

This order, and the one issued on July first mark one of the important steps toward conservation. They are the [fol. 1097] beginning of the restriction of production to the reasonable market demand. Although written nearly thirty years ago, and before the passage of any effective conservation statute, these two orders contain many arguments in behalf of proration and conservation that have not been improved upon.

In the trial and error search for the answer to their problems the operators next sought relief through legislation. The Oklahoma Legislature convened in January, 1915, and out of this legislature came two important statutes, one on oil and one on gas. The essential features of the oil statute were a definition of waste as including economic, underground or surface waste, and as being any production in excess of the reasonable market demand. It also fixed the potential as the basis for pro rata withdrawals, thus establishing a yardstick for the protection of correl-ative rights.

To the Corporation Commission, because of its broad constitutional powers, was delegated the administration of this Act, and a 1917 Act creating an Oil and Gas Conservation Department to enforce the Commission's orders. Oklahoma was the first state to have this or any similar law. No other state followed its lead until 16 years later when Kansas enacted in 1931 substantially the same law.

Section II of the Act authorized the Commission to prohibit the production of oil when its price was not sufficient, and this brings to our attention a rather astonishing fact. [fol. 1098] Having in 1914, used, what legal authorities tell us was "at most questionable authority" in fixing the price of oil, and being under the 1915 Act specifically empowered to do so, the Corporation Commission never thereafter attempted to exercise this authority and the section lay dormant until repealed in 1933.

The companion gas act of 1915 was also very broad. It prohibited every known form of waste of natural gas. It authorized the Corporation Commission to make rules and regulations, and provided for their enforcement. One of its provisions was that the Commission should consider acreage in the allocation of gas. Strangely enough, this authority was not effectively used until 1943, when the present Commission issued a gas allocation order on the Medrano Sand of the West Cement Field. This order

uses a formula for the allocation of gas which takes into consideration productive acreage, well potentials and weighted average pressures of the wells in the pool. It is one of the first orders of its kind ever issued.

Following the passage of the two 1915 Act-, general rules and regulations were issued by the Corporation Commission (later amended in 1917), and by November, 1915, the price of crude had advanced to a dollar a barrel. This 1915 legislation is considered by many eminent legal authorities as a dividing line in the history of conservation. As legislation it is, but as far as our present conception of the conservation of reservoir energy is concerned the legislation bears no such distinction. Waste as we now know [fol. 1099] it had been and continued to be appalling. It is not just, however, to say that progress had not been made, for in the following years it was discovered by operators that by restricting production to market demand they thereby conserved reservoir energy and obtained greater ultimate recovery.

The first orders issued by the Commission, following the 1915 legislation, contain many interesting observations. For example, a definition of conservation given by one writer was quoted by the Commission as follows:

> "'Disregarding the views of theorists and visionaries, we may define conservation as utilization with a maximum efficiency and a minimum waste.'"

The Commission quoted certain testimony as follows:

> "They express themselves as being of the opinion that in the past more than ten percent of the gas produced in the Cushing field has been utilized and that in the time embracing the years 1913 and 1914 and the first half of 1915, waste of gas in the Cushing field amounted to two hundred billion cubic feet.
>
> "This amount at two and one-half cents per thousand cubic feet, the price at which gas has sold in said field, would be equal to five million dollars, and at twenty-five cents per thousand cubic feet, the price at which gas is sold for domestic purposes in municipalities nearest production, would amount to fifty million dollars.'"

[fol. 1100] Note the emphasis is on the utilization of gas as a fuel not as energy. And again quoting:

"In drilling for oil in some districts large gas wells are found in sands above the oil sands. In many instances the pressure and the volume of such wells are so great as to prevent drilling to the lower oil-bearing sand until the well has been allowed to exhaust its gas production into the air, sufficient to permit the resumption of drilling. Usually this criminal waste is allowed to continue until the gas-bearing sand is nearly if not quite exhausted."

". . . . plugging is generally improperly done, with the result that at many wells water from a water sand is permitted to flow into a gas sand, thus drowning out the gas supply."

"According to the Oil and Gas Journal of March 6, 1910, a well in the Preston field near Okmulgee, Oklahoma, was at that time permitted to run wild at the rate of thirty-six million cubic feet of gas per day. It had been open for several weeks in the hope that it would become an oil well. There was no way to take care of the gas and the pressure was so great as to make it impossible to operate tools in the hole."

[fol. 1101] A quotation from another article said:

"The Glenn Pool lies to the east and southeast of Sapulpa. This is one of the greatest oil and gas pools that has ever been developed. . . . A number of wells produced large volumes of gas from above and in the oil sand. It is estimated that not more than fifty million cubic feet of gas was consumed outside of field operations and that perhaps as high as fifty billion cubic feet of gas was wasted. Many wells with initial volumes of from ten to thirty million cubic feet flowed wide open for periods of from one to eight weeks. The amount was negligible in proportion to the amount wasted."

Realizing that cooperation was essential, the Commission said:

"The Commission realizes that those methods, habits and customs that have existed for a generation or more cannot be reformed by fiat nor superseded with-

out reason, and to accomplish conservation requires time and education and the cooperation of the members of the industry."

Controversies between gas purchasers and oil producers arose about the utilization of natural gas. Gas companies thought all gas, whether produced with oil or by itself, should be utilized. By utilized they apparently meant made available for consumption. Oil producers of that day appear to have considered the gas they produced in excess of their needs for lease operations as nothing more than [fol. 1102] a nuisance and suggested that Utility Companies should look to natural gas fields for their needs. The value of gas or water as reservoir energy was not generally appreciated, and the energy which caused the wells to flow was generally attributed to the compaction of the reservoir rock.

It was also the belief that a well once started to flowing should never be shut in again for any period of time—that the well would be permanently killed. Many examples were given in support of this belief. One cited the case of a wildcat well in the Okmulgee area which came in for several thousand barrels and filled all available storage. It was shut in, pending pipe line connections, and when reopened several months later never produced another barrel of oil.

These phenomena can generally be attributed to improper completions though the general rules referred to above did provide for proper casing and segregation of separate zones.

During the twelve years following the enactments of 1915 very few problems concerning proration arose— principally because nothing occurred to seriously disturb market conditions. Occasional proceedings against violators of its orders were necessary on the part of the Commission, but it was with the development of the greater Seminole area first discovered in 1925 that serious disturbances again appeared. The state's production in 1927, due to [fol. 1103] production from the Seminole Pools had reached a daily average of seven hundred sixty-one thousand barrels, the highest in the state's history. By 1928 other flush pools had been brought in, and on September 9, 1928, Order #4430, the first state-wide order issued by any state, was issued by the Oklahoma Commission,

The order considered the market for the state as a whole and allocated that amount to the pools within the state and to the wells within the pools on a basis of their potentials. Thus began the period of continuous state-wide proration. The order gave particular consideration to stripper wells, realizing the danger of curtailing their production. All subsequent orders issued by the Oklahoma Commission have contained similar provisions.

Serious market problems were already appearing throughout the nation. Extremely large wells were being completed in California and in Southwest Texas, and in December, 1928, the discovery well of the Oklahoma City Field was completed. With the discovery of this and of the enormous East Texas field in August, 1930, began one of the most turbulent periods in the history of the petroleum industry. Students of reservoir conditions were already expounding the new theory of restricted withdrawals as a means of conserving reservoir energy and the orderly development and operation of such pools as Van and Hobbs was being cited. This period in the late twenties and early thirties marks the transition of the petroleum industry into the fourth or present stage in the development of conservation. It was at this time that we began to think in terms of conservation of reservoir energy rather than [fol. 1104] merely the restriction of production to market demand. A number of orders issued by the Oklahoma Commission during this time indicate its willingness to consider new engineering principles even though the 1915 statute probably did not authorize such consideration. Many things combined, however, to defeat the application of this theory, in the development of the Oklahoma City field. The State's market was constantly declining—the cost of drilling in the Oklahoma City Field where town lot drilling soon developed was enormous, and relatively few market facilities were available. Every known form of attack, legal and otherwise, was made on the statutes and on the Commission's orders. Attorneys and operators held their breath with each new attack, realizing that if it were successful proration would be destroyed in Oklahoma. Conditions grew gradually worse and by July, 1931, the posted price of crude in Oklahoma City was thirty cents, though many thousands of barrels reportedly sold for as low as ten cents. Finally, on August 4, 1931, Governor Wm. H. Murray proclaimed martial law and ordered every

well in the Oklahoma City Field shut in with the reported announcement that they would not be reopened until the price of crude was a dollar a barrel. A few weeks later Governor Sterling of Texas took the same action in regard to the East Texas Pool. The Oklahoma City shut-in order was lifted in October, but the National Guard continued a degree of control over the passage in 1933 of a new Conservation Act, certain defects having been found in the 1915 law.

[fol. 1105] During the early life of the Oklahoma City field many methods of defeating proration were devised and it might be interesting to describe a few of them here. The potential was the basis of allocations, and the stakes were high. Many of the wells were enormous—one actually producing nearly fifteen thousand barrels on a four-hour potential test, and it has, during its lifetime, produced approximately two and one-quarter million barrels of oil. Certain operators appreciating the value of a large potential thought up some rather cunning means of obtaining them. One operator removed a two-foot section from a guage line. A potential measured by this line would register two feet, or some one hundred thirty barrels more than the well actually produced on a four-hour test. This figure multiplied by six, to arrive at a twenty-four potential, would represent a rather tidy gain over neighboring operators when allocations were being made. Another operator, even more resourceful, obtained a guage line which was graduated in scale. That is to say, the end near the plumb bob was normal, measuring the prescribed twelve inches to the foot, while further up the line was graduated until some of the feet measured a scant eight or ten inches. The Commission decided that more accurate potentials might be obtained if its employees were furnished guage lines of their own. During the martial law period, an operator suspended a small rod from inside the bull plug atop the well Christmas tree hook up in such a manner that the master gate could not be closed and the well continued to produce in violation of the shut-in proclamation issued by the Governor. To one well was connected a high pressure [fol. 1106] line below the master gate. The line was buried deeply and had a control valve at the discharge end some distance away near a large storage tank into which it was produced even after authorities had closed the master gate.

Underneath the surface the field soon became a maze of criss-crossing lines. These were sometimes tapped at points of intersection, and the "tappee" frantically sought the reason for his suddenly diminished pipe line runs. Magnetic instruments were employed to discover these unchartered pipe lines so one violator used a *rubber* pipe line to better his potential. The term "hot oil" was born and was used to describe stolen oil, though later it became the term for any oil produced in violation of allowable orders. The Commission was of course concerned with these matters, and with the tremendous waste of natural gas occurring in the Oklahoma City field. One of its witnesses testified that probably three hundred million cubic feet of gas daily had been popped into the air for a period of at least two and one-half years. More than twice the amount consumed for all domestic and industrial purposes in the entire State of Oklahoma each day. The Commission stated that—quote:

> "Such wastage of natural gas is flagrant and wanton, and its lack of prevention is inexcusable, except for an alleged weakness in the oil statute; . . . the waste or dissipation of such natural resources is, or ought to be, a crime against the state and its people. . . ."

[fol. 1107] Similar waste was occurring in the East Texas field.

These practices, while perhaps interesting, are not intended to imply that all operators used them. They were the exception and were resorted to for various reasons. Some of these things were done against the operator's better judgment because of financial obligations to which he was committed—on the basis of higher production than that allowed. Some believed, whether rightfully or not, that offset operators were being dishonest, and that they must do likewise in self protection. A few operators opposed proration in any form and still others were just plain chiselers.

Following the enactment of the then "model" Conservation Law of 1933, these practices gradually subsided. Today conservation in Oklahoma is conducted on a basis of mutual trust and respect between the operators and the Corporation Commission. The only basis on which any effective conservation program can be administered. As example

of this cooperation is the work now being done by committees from the industry toward revision of the Commission's general rules and regulations on the production of oil and gas. The first revision in some instances since 1917. Another practice followed in the state is the holding of a conference of operators and the Conservation Department preceding all statewide Commission hearings at which mutual problems are discussed.

[fol. 1108] The conservation law enacted by the Oklahoma Legislature in 1933, which improved the 1915 Act and created a Conservation Department for the enforcement of the Act and Commission orders was a long step toward conservation.

The well spacing act which followed in 1935, while containing many defects, was also a progressive step.

Both of these acts, while now known to be defective, were at the time of their passage considered extremely good legislation. But after approximately ten years these acts have become in many instances antiquated. For example, while ours was the first law directly authorizing any agency to establish spacing units, in the enactment of that statute so many limitations were placed upon it that in many instances its purpose is defeated. Eighty per cent of the lessees owning eighty per cent of the acreage must join in the establishment of any unit of more than ten acres, and there is some reason for contending that in making allocations the Commission under our present law must do so entirely on the basis of potentials. As you all recognize, wide spacing in many cases is essential and in making allocations, factors other than potentials should be taken into consideration. As has been true in the past, the Oklahoma Conservation Department and Commission now consider many things that are recognized by the industry in fixing the maximum efficient rate of withdrawal but which may not be included in the statute. This shows the necessity of constantly keeping in mind the revision of statutes. All oil producing states should look forward immediately to the enactment of comprehensive, effective and modern [fol. 1109] laws that will keep pace with science. Today this is more important than ever before in the history of the oil business.

The Office of Petroleum Administrator for War, as we all know now exerts extraordinary control over oil development.

It is practically the unanimous opinion of the oil industry that this power should be returned to the states as soon as the present emergency is over. It is also admitted that during the present war many scientific developments have been made for the production of oil, and if the various states do not have laws sufficient to put in force and effect this new scientific information it may be an excuse for Federal agencies to attempt to retain this present power.

In line with this thought, the American Petroleum Institute, the Interstate Compact Commission, the Independent Petroleum Association, and other industry associations have recommended the improvement of laws in the various producing states. These organizations have been of great assistance to the industry, as well as the producing states, in their encouragement of sound conservation practices and many important advances have been made in conservation by the present Oklahoma Commission. During 1943, for example, two important and far-seeing gas allocation orders were issued. One already mentioned covered gas production from the Medrano Sand of the West Cement Field. A similar order was issued on the Lower Charlson Zone of [fol. 1110] the Chickasha Gas Field. After the issuance of the Medrano gas order, it was discovered that what had theretofore been considered a gas field was actually a gas cap over an oil field, and subsequent orders restricted the withdrawal of gas for the protection of the oil in the reservoir, and provided a maximum gas/oil ratio for the oil wells.

In the case of the enormous Guymon-Hugoton Gas field lying astride the Oklahoma-Kansas line, the Commissions of Kansas and Oklahoma have collaborated in the issuance of joing gas allocation orders embodying the principles of productive acreage and deliverability. The principle employed in this and the Medrano order are the same and represent the first effective use of acreage, pressure and open flow in a gas allocation formula.

Notwithstanding defects apparent in existing statutes, every attempt is being made by the present Oklahoma Commission and its Conservation Department to stay abreast the times in the promotion of conservation. The demand for crude oil being what it now is, conservation of reservoir

energy is now almost the sole reason for restriction of production.

The last Legislature, by proposal of the Commission, passed an Act which raised the standard of qualifications of the employees of the Commission's Conservation Department, providing for a geologist and two petroleum or gas engineers. A companion act, likewise proposed by the Commission, carried an almost unheard of proviso for these times. It reduced by twenty per cent the tax supporting the Conservation Department.

[fol. 1111] Following the Legislature's authorization, highly competent engineers were employed by the Conservation Department, and for their use was purchased equipment for taking bottom-hole samples. This equipment, in connection with that of operators, is being periodically employed throughout the state in recording pressures in all important fields, and those pressures are being used as one of the factors in fixing pool allocations. The purchase of equipment for taking bottom-hole samples is being considered. Gas/oil ratios and water encroachment are also carefully observed, and these factors likewise affect the allowables set up for pools and for wells.

In summing up this development of conservation, several important features appear to stand out. One is that when the price of oil has dropped below that permitting a decent profit, then conservation or proration has gone overboard, for before conservation can be effectively practiced the commodity conserved must have value. Another strong argument for a highly necessary increase in the present price of crude.

It will also be observed from what has been said above that before the passage of every law in Oklahoma, there has been agitation by the industry and action taken by the Commission which, while it may have been legally questionable [fol. 1112] at the time, was later authorized by the law. Oklahoma again finds itself in this position.

And finally it should be observed that at least so far as Oklahoma is concerned, in the promulgation of any rule or law governing the proration or conservation of oil or gas, it has been proven that most of the benefits that have been derived therefrom have accrued to the small or independent producer. Though he may have opposed the institution of these rules, after the rule has once been put in force and

effect and its results ascertained, the independent producer usually becomes the strongest advocate of the law or rule.

[fol. 1113] EXHIBIT 57

Statement by

Walker T. Pound, Oil & Gas Conservation Officer

before

Federal Power Commission

Oklahoma City, Oklahoma

October 9, 1945

The Oil & Gas Conservation Department of the Oklahoma Corporation Commission is the agency by which the orders of the Commission, regulating the exploration for and production and gathering of crude petroleum and natural gas are administered.

The Oil & Gas Conservation Department consists of a Conservation Officer, Conservation Attorney, one Senior Petroleum Engineer, three Petroleum or Gas Engineers or Geologists, 14 Deputy Conservation Officers, one Chief Clerk, 3 Statisticians, 7 secretaries, clerks and stenographers, and one court reporter.

Attached hereto and marked Table #1 is an organizational chart showing the number and qualifications of Conservation Department employees.

Oil and gas are produced in Oklahoma from approximately 55,000 wells ranging from less than 300 feet to almost 12,000 feet in depth. Consequently the problems of regulation are many and varied.

Without discounting what was done prior to 1915, I will, for the sake of brevity, commence with the administration by the Corporation Commission of the more comprehensive Gas Act of 1915. Armed with the rule-making power granted to it by that act, the Commission set out to do a real job in the field of conservation. A state-wide natural gas investigation comparable perhaps to the one now being conducted by the Federal Power Commission was instituted. Extensive hearings were held throughout the State. Hundreds of pages of testimony were taken. The same problems now being considered in this investigation were there considered at length; end use; the question of so-called

preferred domestic uses in relation to industrial uses; regulation of field prices; problems of ratable taking; pipe line regulations; gas-oil ratios; use of casinghead gas for the extraction of gasoline; and use of gas for carbon black. All of these and more were considered. Witnesses included oil operators, gas producers, landowners, users of gas, representatives of distributing companies, owners of pipe lines, representatives of civic organizations, and engineers and geologists for the Bureau of Mines. Everyone having an interest in the production, transportation, distribution or use of gas, whether from oil wells or gas wells, was given an opportunity to participate and be heard. As a result of that investigation, the Commission, effective as of September 1, 1915, entered its Order 937 promulgating a set of twenty-eight rules applicable to the drilling for, production, ratable taking and transportation of gas. The extensive findings of fact, made a part of the order, evidence the grasp that the Commission had on the subject and its keen foresight. The rules thus promulgated remained in force until August 20, 1917, when, following the 1917 Act creating the Conservation Department, the order was superseded by Order 1299, which, for the most part, readopted the existing rules with a number of additions.

Insofar as natural gas is concerned, very little regulation, [fol. 1114] other than that imposed by Order 1299, appears to have been necessary between 1917 and the early thirties. This may be explained at least partially by World War I and the ensuing period of prosperity. The law of supply and demand was working and natural gas was bringing higher prices. It was not until the discovery of the Seminole and Oklahoma City fields in the late twenties that the conservation of gas, produced with oil, both as energy and fuel again became a serious problem. The discovery of these and other large fields throughout the country soon resulted in a flood of crude petroleum and the gas produced with it. This together with the general economic condition throughout the country soon developed into one of the periods of most appalling waste in the history of the industry. As normal conditions returned, values increased and conservation practices were more easily enforced. In the conservation of oil and gas no more effective agent has yet been found than an adequate price.

During the period from 1917 to 1933 the Oklahoma Commission issued numerous orders with the object of conserv-

ing the gas produced with oil. A search of the records however indicates that the first special pool order issued regulating the production and purchasing of gas produced from a dry natural gas pool was Order 6518, Cause #11.111, issued in November 8, 1933. The order applied to the Carney Pool of the Quinton Gas Field located in Pittsburg County in Southeastern Oklahoma, and is exhaustive. It found, among other things, that the purchasers in the pool were common purchasers and ordered them to take ratably from all wells in the pool on the basis of each well's open flow capacity, . . . "when corrected for acreage, on the basis of one well to not less than 40 acres . . .". It is believed to be the first order written wherein the acreage drained by each well was made a factor in allocations. The order is still in force.

The next notable step taken by the Oklahoma Commission in the regulation of production, gathering and purchasing of natural gas was on January 4, 1943, when Order 16170 in Cause C. D. 822 was issued. The order covers the Medrano Sand of the West Cement Gas Field, Caddo County, in Southwestern Oklahoma. The order was issued after several months of conference between the Conservation Department and the operators, and after numerous hearings by the Commission during which a great deal of testimony was offered. The order allocates production on three factors:

1. Potential (based upon the Bureau of Mines back pressure method of gas wells) which prevents the wasteful flowing of gas into air.
2. Productive acreage (not to exceed 160 acres) attributable to each well,
3. Well head pressure.

Equal value is given to each factor. This is probably the first such order issued by a regulatory agency.

The order required the tubing of wells, ratable production and ratable taking and delineated the productive acreage attributable to the pool and to each well. It requires that a monthly pressure survey and periodic potential tests be made in order that each well's allocated share of the total pool production can be determined. The order has been amended from time to time, particularly with respect to the productive area of the pool, but the basic princip*al*

[fol. 1115] of productive acreage times potential times pressure factor remains unchanged.

Shortly after the issuance of Order 16170 oil was discovered on the flank of the Medrano Pool and it was realized that what had been considered a dry gas pool was in reality a gas cap on top of an oil pool. Immediate steps were taken to conserve the reservoir energy and to protect the rights of the parties interested in the pool and to assure the greatest ultimate recovery of oil and gas from the pool. There followed a series of conferences and hearings before the Commission, and on May 14, 1943, the Commission ordered the entire gas producing area of the pool shut in for two weeks. The Bureau of Mines and the P.A.W. were both asked to assist the Conservation Department and the operators in an intense study of the pools, which assistance was readily given. During the two weeks "shut in" period, and for several months thereafter, an exhaustive study of the pool was made. On October 13, 1943, the Commission issued Order #16,683, which order established rules and regulations for the drilling, equipping and producing of both oil and gas wells in the Medrano Sand, West Cement Pool. The productive limits of the pool were redelineated. Provisions were made for surface casing, flow string, cementing, tubing and other completion requirements. A gas/oil ratio of 2,000 feet per barrel of oil produced was fixed for the oil wells "provided, however, if the gas is delivered into a pipeline . . . the gas/oil ratio shall not exceed 3,000 cubic feet of gas to one barrel of oil."

In the meantime, the Commission had, through a series of orders, been gradually restricting the total amount of gas which could be withdrawn daily from the gas wells in the Medrano Pool. During the latter part of 1943, the daily average amount of gas which may be produced from the pool in any one month was fixed at not to exceed 23,626,000 cubic feet. That limiting figure still applies. In arriving at this figure, the Commission gave thoughtful consideration to the interests of the citizens of this and other states who were and are consumers of the gas produced from one of our principal sources of supply. The right and duty of the Commission to preserve and maintain reservoir pressure in its attempt to closely approach volumetric withdrawals from the reservoir was to some extent reconciled with its concern for the consuming public.

Meanwhile two other important gas allocation orders were being promulgated. Order No. 16454, in Cause C.D. 822, establishing rules and regulations governing the production, conservation, ratable taking, and transportation of natural gas from the Lower Charlson Sand of the Chickasha Gas Field, Grady County, Oklahoma, was issued on May 26, 1943. The order grew out of the same application and is identical in principle to the original Medrano Order—embodying the features of productive acreage (80 acre units in this instance) times pressure times potential. While constituting one of the state's principal gas reserves, the surface area of the field is relatively small. This fact, together with the fine spirit of cooperation on the part of all producers and purchasers (many wells are selling gas to two pipelines), and the fact that no oil was found to further complicate matters had made the administration of Order 16454 little more than a routine matter. Waste is non-existant, and ratable production and taking are firmly established. Subsequent drilling made it necessary from time to time to, as in the case of the Medrano order, redefine the productive limits of the pool and other minor amendments have been made, but basically the order has not been changed.

[fol. 1116] The next notable achievement of the Oklahoma Commission in connection with the prevention of waste and ratable taking of natural gas was in connection with the Texas County, Oklahoma, portion of the vast Guymon-Hugoton Gas Field which lies astride the Kansas-Oklahoma line. The application in connection with this field was actually filed by the Conservation Officer early in 1942 though an order was not issued until May 5, 1943 (Order 16377) and it was not effectively in force until the issuance of a subsequent order #17410 on December 27, 1944, effective as of January 1, 1945. During this period there were countless hearings by the Commissions of Kansas and Oklahoma and meetings of representatives of the two bodies. From the very beginning of these discussions mutual trust and respect of each state for the rights of the other prevailed. It is only natural that each state was anxious to protect the rights of its citizens, but the ultimate objective of equitably protecting and conserving this the greatest of all natural gas reserves was always preeminent. Basically each order employs the factors of acreage times pressure

times potential except that in the Hugoton orders the factors of Pressure and Potential are combined into deliverability. The basic acreage unit is 640 acres. The principle of ratable taking is reasserted and the opportunity of the several lessees and their royalty owners to recover their fair share of the gas underlying their property is guaranteed.

The natural gas industry generally, and representatives of the Petroleum Administration for War, have stated the Hugoton orders, from the standpoint of both conservation and equity to be the finest regulation in the history of the industry. This objective could not have been achieved except for the frank and open manner in which the entire problem was from the beginning approached. It is an example of what can and doubtless will be done when, in the future, similar problems confront these and other states. Likewise exceptional credit should be given the Interstate Oil Compact Commission in this matter. The close associations between the states of Oklahoma and Kansas were formed through their work in the Compact, and it was at Compact meetings that discussions toward settlement of the Hugoton problem first began.

Pursuant to the enactment of House Bill No. 257 the Oklahoma Commission re-enacted the Guymon-Hugoton Order on May 31, 1945, as order #17867, which order is now the effective order in the field.

While relatively little difficulty has been encountered in administering the Guymon-Hugoton order, the Commission did on January 10, 1945, issue in Cause C.D. #902 Order No. 17463. In that order the principles of common purchasing, ratable taking and ratable producing were extensively defined and it is for that reason that reference to the order is here made.

Except with respect to pools in which special pool rules were made applicable Order 1299, previously referred to, remained in force as the general rules of the Commission until superseded by Order No. 17528, dated January 24, 1945. Order 17528 now constitutes the general rules of the Commission by which the drilling for, production, and gathering of oil and gas is regulated.

The history of Order 17528 is indeed unique. It represents the combined views of the Conservation Department and of scores of representatives of the oil and gas industry,

consisting of engineers, geologists, lawyers, drillers, plugging contractors, practical operators, drilling contractors, [fol. 1117] producers and purchasers. More than a hundred meetings of committees and sub-committees were held during the period of its preparation which covered some 18 months. The general rules of every oil and gas regulatory body in the nation, including Federal agencies, were studied. Many of these provisions were adopted with such changes as were particularly adaptable to the peculiar problems existing in Oklahoma. When on January 24, 1945, the proposed regulations were presented to the Corporation Commission on application for adoption, their endorsement was practically unanimous, and they were promptly and unanimously adopted by the Commission. It is believed that no more modern and comprehensive set of general rules exists—they cover every operation in the petroleum industry from the "spudding in" of a well to its completion or final abandonment including the definition and prevention of all forms of waste.

Order 17528 is in my opinion a tribute to the Oklahoma Commission and to an industry which in the midst of a war and a critical manpower shortage gave so much of its time to the end that that industry itself should be better regulated and better conservation practices might obtain. As one committee member, during its preparation, remarked, the order is indeed a fine example of the result of "Democracy at Work".

The policy of conferring with the oil and gas industry relative to proposed regulation is not however an innovation in Oklahoma. It has long been the practice of the Conservation Department to meet in conference with operators whose interests may be affected by proposed changes in some particular rule. While the Department and the operators by no means always agree, frank and open discussion of the problems of each have shown that prudent operation and conservation are never in conflict. The result of this policy is that regulation has developed into a maximum of cooperation and a minimum of necessary enforcement.

The Order No. 17528 is divided into seven main subjects under which there are 54 specific rules and 54 definitions. Of particular interest to this Commission would most likely be Definition No. 54 (Waste) and rules Nos. 101-102-104-

105-201-211-304-306-307-310-401-402-403-404-405-601-602-603-604-608-702 and 703.

The rules in Order 17528 are general rules and apply in all pools where no specific pool rules have been issued. The Corporation Commission has however issued many special pool rules, and for their administration and enforcement a highly competent staff of engineers, geologists and men with practical experience are employed. For their use the Conservation Department has purchased the latest and most modern well testing equipment at a cost of approximately $5,000.00. With this equipment, periodic surveys are made for the purpose of determining bottom hole pressures, gas/oil ratios, water encroachment and other pertinent data. Detailed records of these surveys are kept in the Department so that at all times the conditions existing in a particular reservoir are known. Daily reports are required of the 14 Deputy Conservation Officers located at various points throughout the state.

Special pool regulation exists for example in the Billings, Cement East Marchand, North Rowe and West Medrano, West Edmond, Pauls Valley Bromide and Pennsylvanian, Pauls Valley East Pennsylvanian—Bromide—Chert & McLish, Burbank South, Oklahoma City Wilcox and others. In [fol. 1118] these oil pools limiting gas/oil ratios have been fixed, or — pools are operated under pressure maintenance programs. In these and most other allocated pools the gas produced with oil goes either to a gasoline plant or to a pipeline or both.

A typical example of a well regulated pool is the Pauls Valley Bromide where early studies indicated the presence of a water drive. This pool was discovered in the latter part of 1942, and proper regulation was begun at once. Gas/oil ratios were fixed and quarterly bottom hold pressure surveys began. As a result of these studies total pool withdrawals were gradually restricted until a figure of approximately 6,300 barrels daily was reached. At this point restrictions were halted and between the last two quarterly bottom hole pressure surveys the pool declined only five pounds in pressure while producing approximately 567,000 barrels of oil. We now know the water is moving into the reservoir at approximately the same rate that the oil is being withdrawn and the forces of nature are therefore effectively at work. A casinghead gasoline plant is

located in the Pauls Valley Pool, but unfortunately due to federal wartime restrictions on the use of material and equipment it has not been permitted to expend sufficiently to the point where all the gas produced with oil in the Pauls Valley Bromide and Pennsylvanian Pools can be processed. Likewise for the same reasons the only gas pipeline in the immediate area has been unable to take all of the tail gas from the gasoline plant. Approximately 8,000 M.C.F. of gas is being vented daily in the Pauls Valley Pool including both tail gas and gas from miscellaneous wells whose volumes are insufficient to warrant delivery to the plant. Plans are now under way to build approximately 35 miles of pipeline to the Pauls Valley and East Pauls Valley Fields (where approximately 14,000 M.C.F. daily is vented) in order to further utilize this gas.

The large West Edmond Pool lying northwest of Oklahoma City is a pool which has been under regular and constant supervision since its discovery. The largest oil field discovered during the war, it is estimated to contain in excess of 800 million barrels of oil, 27 million barrels of which it has already contributed to the winning of the war. The West Edmond Field has been operated under extremely close supervision since its discovery. The discovery well was completed on April 12, 1943, and on July 19, 1943, the Commission on application of the operators in the pool issued Order 16510, which created 40-acre drilling units and provided for other conservation measures such as cementing, casing and tubing requirements and fixing a gas/oil ratio limitation of 2,000 cubic feet of gas per barrel of oil.

Several subsequent orders have been issued, all designed to further conserve and to protect the oil and gas in the reservoir and the equities of the parties interested, and to insure the greatest ultimate recovery the last such order being Order 17920, issued on June 26, 1945. Quarterly surveys as to gas/oil ratios and bottom hole pressures are made. An association of the operators in the pool has been formed, which association works in closest harmony with the Oil and Gas Conservation Department in making the surveys and tests in the field. Approximately 675 producing wells are in the field. The present oil allowable is 100 barrels per well per day. A survey just completed, when every well in the pool was tested by the Conservation

Department, shows the average gas/oil ratio to be 1878 cubic feet of gas per barrel of oil. On these figures the pool is producing daily approximately 60,000 barrels of oil, and something over 100 million cubic feet of gas daily. Probably 90% of this gas is going to gasoline plants for processing. Of this amount roughly 20% is lost in processing, and of the remainder about 45 million cubic feet of tail gas is going to pipelines for ultimate consumption. Installations are now being made to make it possible for pipelines to utilize approximately 106 million cubic feet daily of tail gas from the two gasoline plants located in the field. Again war time restrictions on the use of materials and equipment have prevented earlier accomplishment of these objectives. [fol. 1119] There are now operating in Oklahoma four carbon black plants utilizing, or authorized to utilize, approximately 50 million cubic feet of gas per day. Two of these are furnace type and two are channel plants. Three of these plants are located near Guymon in Texas County, Oklahoma, and utilize gas produced in the Guymon-Hugoton gas field. The fourth, a channel type plant is located in Pontotoc County, Southeastern Oklahoma. The permit for this latter plant was issued in December, 1937, and authorized the use of only residue gas from a casinghead gasoline plant. Later this permit was amended to permit the utilization of gas from wells whose volumes and pressures had declined below their economic usefulness for any other purpose, and which wells would otherwise have been abandoned. Obviously to have refused the permit in this instance would have caused waste. Still later, on May 22, 1945, by Order 17834, the Corporation Commission amended the previous orders to permit the use of residue gas from the gasoline plant located near the Cumberland Oil Field where some ten million feet of tail gas is available over and above that being taken by natural gas pipelines. The order directed that not less than five cents per M.C.F. be paid for the gas. War time restrictions prevented the operation of this last permit.

The other channel plant is the one located in Texas County, Oklahoma. Order 17359 authorizing this plant was issued on November 24, 1944. It authorizes the use of 30 million cubic feet per day on the conditions that the permit shall continue for the duration and six months thereafter, that the well head price of gas be not less than

five cents per M.C.F., and that gas be purchased ratably from all those offering gas for sale.

The construction and enlargement of these carbon black plants has been of great benefit to the State of Oklahoma. They have either provided a needed expansion in the market for our gas or have prevented the premature abandonment of wells still capable of producing some gas, or have permitted the further utilization of gas which has produced oil and has had the liquids extracted therefrom. These plants have contributed to the industrial development of our state and further the gas which they use is being purchased at a price as high, or higher, than that being paid by pipe lines. Such utilization cannot be termed waste.

Insofar as the physical waste of dry natural gas is concerned, there is none in Oklahoma. With respect to gas producing or produced with, oil while some of it is being vented such gas is serving the useful and principal purpose which nature intended it to serve. Gas produces oil, and some gas is produced with all oil. So long as efficient production practices are being followed, conservation is being practiced, for to conserve does not mean to hoard. It is true that in the major fields in Oklahoma approximately 85 million cubic feet of gas per day is available for further utilization. This includes gas vented at wells and at gasoline plants. Due partially to the fact that only 5% of the casinghead gas produced in Oklahoma is sour gas, 82% of the gas produced from major oil fields in Oklahoma goes to either gasoline plants, pipe lines or is used in the field. The average gas/oil ratio in these fields is 1287 to 1. Only 12% of the tail gas from gasoline plants is being rented. We consider this a remarkable record in conservation and further utilization of gas. In every one of these major oil fields, plans have either already been made, or are being made to use the 18% of gas now being vented. The purchasers of gas have in practically all instances been helpful and cooperative in working out these problems.

The stripper wells of Oklahoma represent approximately 50% or 200,000 barrels daily of our oil production. Even with an average gas-oil ratio of only 904 cubic feet per barrel of oil, these wells naturally produce when totaled a large amount of gas, to be specific, approximately 180 million cubic feet daily. To an uninformed person this figure could be misleading. It must be remembered, how-

[fol. 1120] ever, that this 200,000 barrels of oil and 180 million cubic feet of gas is produced from approximately 50 thousand wells, most of which are pumping wells, with an average production of only four barrels per well per day. These 50 thousand wells are scattered over an area of approximately 14 thousand square miles—eleven times the area of the State of Rhode Island. The gas produced from them is in most instances not even sufficient for lease requirements, and it is often necessary to purchase gas for such use. No informed person could possibly confuse the venting of this gas with waste.

Oklahoma is fortunate in having tremendous gas reserves within its borders. Enough for our own use and for the use of others. We have been, and are still happy and eager to share this great natural resource with the people of other states. We do feel, however, that people who produce the gas and their royalty owners should likewise be permitted to share in its benefits. That for this reason, and particularly in the interests of continued gas conservation, higher field prices for both dry and casinghead gas are necessary. We feel that all producers and royalty owners of natural gas, whether or not they engage in its transportation, are entitled to the same benefits. If laws exist which do not permit the application of this principle, then we feel that the law should be changed.

It is axiomatic in the oil and gas business that low field values make conservation more difficult of enforcement. They retard exploration and development, and cause premature abandonment of producing properties. Higher value encourage wildcatting, deeper drilling and other types of exploration which result in additional and increased supplies of natural gas. We believe that gas should be permitted to compete in an open market with other fuels subject to such regulation as is necessary to protect the interests of both producer and consumer—thus encourage conservation, promote a continuing supply of gas to the consumer and better protect the interests of Oklahoma and the nation.

[fol. 1121] EXHIBIT 58

GAS PURCHASE CONTRACT

This agreement, made and entered into this — day of ——, 1945, at Oklahoma City, Oklahoma, by and between —— ——

corporation, with its general business office at —— ——, hereinafter referred to as "Seller," and Cities Service Gas Company, a Delaware corporation, with general business offices at Oklahoma City, Oklahoma, hereinafter referred to as "Buyer,"

Witnesseth:

Whereas, Seller owns and operates many oil and gas leases in the Mid-Continent area and owns oil and gas leases in what is commonly known as the Hugoton Field, in Oklahoma, Kansas and Texas covering approximately —— acres of land in said field, That said Hugoton Field is comprised of about two million five hundred thousand (2,500,000) acres of land that is considered proven as productive of gas; Seller already has a number of productive gas wells in said field and intends hereafter to drill a great many more, to produce gas for sale by it in said field to those that it may hereafter contract with to sell gas in said field, including without limitation. Buyer herein, so far as such future sales in the field may be legally compatible with its present contractual obligations including the obligation of this contract, and desires to sell to Buyer the gas produced from certain dedicated acreage hereinafter described or designated; and

Whereas, Buyer is engaged in the business of producing, purchasing, transporting and selling natural gas, at wholesale, to chosen customers and to distributors of natural gas throughout a wide area comprising several states of different climatic and temperature characteristics and, in order to meet the requirements of its said customers, is desirous of obtaining a supply of merchantable natural gas, in addition to its present supply that will be ample in supplementation of its present supply to meet, insofar as is possible, at all times and over a long per od of years the demands of its customers at the various times such demands occur in its widely distributed markets, caused not only by the wide geographical area covered but also by quick and drastic changes of temperature and other factors of similar or different nature causing quick and extreme fluctuation. It is necessary, in order that Buyer may economically, efficiently and adequately utilize the gas to be sold by Seller, that such gas be delivered to it with appropriate continuity and at as high pressure as is feasible, especially in view of

the fact that the virgin pressure in said field is radically sub-normal and substantial lowering of pressure causes large added expense and precarious operations and results for buyer,

Now, therefore, premises considered, in consideration of the mutual covenants and agreements herein contained, the Seller and Buyer agree with each other as follows:

1. Seller hereby agrees to sell and deliver at a point located on the existing gathering line, owned or operated by Buyer, near the —— —— Texas County, State of Oklahoma, and Buyer agrees to purchase and receive, at said point of delivery, in the current conduct of its business, and in accordance with approved practice in the industry, all the merchantable gas in its natural state of production, except casinghead gas, from wells now drilled and hereafter to be drilled on the premises colored yellow on the map marked Exhibit "A" hereto attached and made a part [fol. 1122] hereof, comprising approximately — acres in the Guymon-Hugoton Field as hereinafter defined, during the respective fixed terms of the Seller's present leaseholds on said premises or any renewals or extensions thereof and as long as gas is produced therefrom in paying quantities, excepting line and other unavoidable losses, reserving only sufficient gas for the fuel requirements of developing undrilled units within said premises and operating said premises, including operations for making deliveries to Buyer, after using all of Seller's casinghead and other gas produced from said premises which cannot be used by Buyer.

It is understood that when Seller purchased many of the leases described in Exhibit "A" it accepted titles thereto based only on abstracter's certificate of title, and while Seller intends to obtain complete abstracts of title thereto and have same examined, the result in some instances may be that the title of Seller's lessor or lessors may not be good and merchantable, and if this should be the case, then the land covered by any such lease, unless the defects in the title are curable to the satisfaction of Seller, may, at Seller's option, be withdrawn from coverage by this contract, and in that event Seller shall substitute another or other tracts of Seller, if Seller has same available, of the same acreage in Texas County. It is also understood that Seller is in the process of acquiring by exchange or otherwise certain of the leases described in Exhibit "A", but if Seller should

fail to consummate such acquisition in any case, then the land covered by such lease shall be excluded from this contract and replaced by other tracts of Seller of the same acreage in Texas County if Seller has same available. References hereinafter in this contract to the lands covered by Exhibit "A" shall be understood to be to the lands therein described less any thereof so withdrawn and plus land substituted pursuant to the above provisions, and plus any additional adjacent acreage hereafter procured by Seller and accepted by Buyer. It is further understood that in a few instances of sections of lands described in Exhibit "A" others than Seller own some of the leases and in each such case Seller and such other owner or owners of leases have entered or are about to enter into unitization and joint operating agreements covering lands within the section in order to form in each such case a six hundred forty acre unit (and such may also be the case in instances of added or substituted lands), and where this is the case Seller agrees to use its best endeavors to purchase at the well such other leaseowner's share of the gas produced from the unit for the life of this contract so that Seller herein may in turn sell and deliver said share of the gas (along with Seller's share) to Buyer herein under this contract.

When Seller has completed its exchange and unitization of various leases as hereinabove set forth and has substantially perfected its title to the dedicated leaseholds, it shall, upon the request of Buyer, execute an appropriate instrument to be recorded in Texas County, Oklahoma, which shall describe the leaseholds dedicated to Buyer hereunder and shall state that the gas to be produced from the same has been contracted to Buyer for the life of the production from such leases.

It is contemplated by the parties hereto that, subject to the productivity of the premises described in Exhibit "A" continuing for such duration, the term of this contract shall extend to ——, 1965 and as long thereafter as gas is produced from said premises in paying quantities.

2. Seller agrees to install, operate and maintain at its own cost, risk and expense a gathering system consisting of well lines, lateral gathering lines and a gathering line of size and design which, for the volumes of gas to be delivered by

Seller and on the basis of pressure drop per mile of line, shall be comparable to the existing gathering system owned or operated by Buyer in the Guymon-Hugoton Field, but not less at any point thereof than four (4) inches in diameter, from its well lines to said point of delivery and to install, operate and maintain such pipe line heaters, regulating devices, drips, separators, and such other or different facili-
[fol. 1123] ties (not including compressors except in the event and as provided for in Paragraph 25 hereof) as may be reasonably necessary to enable Seller to deliver uninterruptedly such gas from its said wells against the varying pipe line pressures at said point of delivery, and so deliver said gas. Seller shall submit to Buyer Seller's design of its said gathering lines and system for Buyer's study and approval and Buyer shall indicate thereon its approval thereof after making such changes therein as Buyer and Seller shall agree upon.

It is further agreed that ownership of Seller's gathering line may be transferred to Buyer upon terms and conditions and at a time to be agreed upon by both parties to this agreement.

3. "Trunk line" is a main transportation line, usually of large diameter, operating at high pressure, and transporting dehydrated gas, from a main field compressor station to market areas.

"Gathering line" as used herein is a line designed to carry gas directly from one or more lateral gathering lines to a main field compressor station or transportation trunk line.

"Lateral gathering line" as used herein is a line carrying gas from one or more well lines to a gathering line.

"Well line" as used herein is a line carrying gas from one well directly to a line of different nature.

"Guymon-Hugoton Field" as used herein shall mean that portion of the Hugoton Field located in Texas County, Oklahoma.

4. It is understood between the parties that Buyer is now producing gas in the Guymon-Hugoton Field, and may in the future continue to produce gas from its own leaseholds and/or mineral fee lands now or hereafter owned in the Guymon-Hugoton Field and is now buying in said field, at pipe line delivery, gas from others than Seller and will

likely continue such purchases from others. Buyer will endeavor to take such amounts of gas hereunder as will enable Seller, from the date of initial production of its wells, to have produced its wells without unreasonable discrimination as between (a) the wells of Seller and (b) the wells of others from whom Buyer is or may be purchasing gas produced in the Guymon-Hugoton Field and the wells of Buyer in the Guymon-Hugoton Field. It is understood that Buyer shall not be obligated to produce its own wells in the Guymon-Hugoton Field, or purchase gas produced in said field from Seller or others than Seller, in greater amounts than it deems appropriate for its business in the exercise of its sole judgment; and Buyer shall not at any time be required to receive amounts resulting from an excess of production from Seller's wells over production at such time from Buyer's own wells similarly rated, whether or not any allocation, prescribed by regulatory authorities, be then in effect. Buyer shall have no responsibility as to the operation or care of Seller's wells nor, unless and until Buyer purchases Seller's gathering system, their respective proration standings or allocations, nor responsibility as to Seller's said gathering system.

It is the intention of the parties hereto that with proper adjustments due to differences in deliverability of wells, Seller shall deliver currently to Buyer and Buyer shall receive currently from Seller under this contract the same proportion of Buyer's current total receipts of gas produced in the Guymon-Hugoton Field that the developed acres of the dedicated premises (computed on the basis of 640 acres developed per well) connected into Buyer's system bears to all developed acreage (similarly computed) in the Guymon-Hugoton Field connected into Buyer's system.

[fol. 1124] It is recognized that Buyer will be unable, due to varying operating conditions, to take gas in said exact proportions during any monthly period, but Buyer agrees that it will to the best of its ability, by balancing excesses against deficiencies during periods of reasonable duration, maintain as nearly as reasonably may be done, said proportions from its various sources within the Guymon-Hugoton Field without unreasonable discrimination.

It is contemplated by the parties hereto that, subject to (a) the productivity of the premises described in Exhibit "A", (b) the number of wells drilled upon said premises

by the Seller, as permitted the Seller, or as required by the Buyer, under the provisions hereof, and the deliverability of such wells, (c) the provisions hereof with respect to the relation between the amounts of gas produced by Buyer in the Guymon-Hugoton Field, the gas produced by others than Seller in the Guymon-Hugoton Field and purchased by Buyer, and the takes from Seller under this contract, (d) the requirements of Buyer's customers in the markets served by Buyer and the determination of Buyer as to what portions of such requirements shall be supplied by gas produced in the Guymon-Hugoton Field, and (e) the orders of regulatory authorities having jurisdiction, the Buyer may require the Seller to deliver under this contract approximately —— cubic feet of gas per annum.

5. Buyer agrees to install, operate and maintain at its own cost, risk and expense at said point of delivery metering equipment of suitable size and design, for the reception and measurement of gas delivered as specified herein. Seller is to have the right from time to time to inspect Buyer's meter in the presence of a representative of Buyer and to ask for tests thereof and to witness same, but is in no event to alter or in any way disturb, manipulate or tamper with any of the Buyer's equipment.

6. The actual point of delivery of such natural gas purchased hereunder shall be at the inlet to Buyer's drip constructed on the inlet side of the Buyer's said meter setting and after the gas is so delivered by the Seller to the Buyer, Seller shall not be liable to the Buyer for any loss, damage or injury resulting from said gas or its use after it leaves such point of delivery.

7. The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base at sixteen and four-tenths (16.4) pounds absolute pressure per square inch and on a temperature base of sixty (60) degrees Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's Law, that atmospheric pressure is thirteen and two-tenths (13.2) pounds per square inch, and that flowing temperature of the gas in the meter is sixty (60) degrees Fahrenheit.

In the event orifice meters are used for the measurement of gas delivered hereunder, coefficients shall be based on the basic orifice flow factor as last published and approved

by the Gas Measurement Committee of the American Gas Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computations shall be made in accordance with an approved method, and the monthly average of these determinations shall be used respectively at the close of the billing period for calculating the volume of gas delivered hereunder.

8. Seller warrants title to gas delivered hereunder and right to sell same and that it is clear of all liens and adverse claims. In case of adverse claim to the title of any gas purchased hereunder or the land from which it is produced or to any unpaid royalties, Buyer may without otherwise affecting this contract retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished. Seller agrees to furnish Buyer, upon its written request for same, abstract of title to lands and copy of leases.

[fol. 1125]

In the event of any such adverse claim, Seller, in its discretion, may, during the pendency of such claim, cease to produce the well involved therein.

9. Upon Buyer's written request, but in no event more often than each six (6) months, Seller agrees to test its wells with a view to ascertaining their open flow, rock pressure and condition. Buyer, if it so elects, may have representatives present at said test, and shall be entitled to receive written reports from Seller on each of said tests.

10. The Buyer shall have the right, when said gas becomes unmerchantable by reason of the oxygen content or from any other or different causes affecting adversely the quality of the gas, or, when the content of said gas renders the reception or transportation thereof in pipe lines owned or operated by Buyer hazardous or difficult, or injurious to its property or to the ultimate consumer thereof, to cease taking the same until such time as it again becomes merchantable or the causes rendering the reception, transportation and utilization of said gas hazardous, or difficult or injurious, as aforesaid, are corrected; however, under no circumstances will it be urged that the gas available for delivery hereunder is unmerchantable, hazardous or in-

jurious by reason only of excessive oxygen content, unless such content exceeds one (1) per cent by volume, or by reason only of excessive hydrogen-sulphide content, unless such content exceeds one (1) grain per hundred (100) cubic feet or by reason only of excessive sulphur content, unless the total sulphur content exceeds twenty (20) grains per one hundred (100) cubic feet. Seller agrees that it will not mix with the gas delivered to Buyer any gas that contains hydrogen-sulphide content in excess of three (3) grains per hundred (100) cubic feet. The Seller shall also have the right to cease delivery, if without its fault, by reason of any of the aforesaid causes, said gas becomes hazardous or injurious to receive into its such equipment, when operated in the manner necessary to make said deliveries. The Seller shall, when said gas becomes unmerchantable or the reception, transportation and utilization thereof becomes hazardous, difficult or injurious as aforesaid, with all reasonable promptness, take all reasonable and practicable steps to eliminate and correct the causes rendering the said gas unmerchantable or the causes rendering the reception, transportation and utilization of such gas hazardous, difficult or injurious as aforesaid.

The gas to be delivered hereunder, is assumed, but not guaranteed, to have an average gross heating value of not less than one thousand (1000) BTU's per cubic foot. If, in any fiscal month as herein defined, the average gross heating value of such gas shall fall below nine hundred fifty (950) BTU's per cubic foot the price to be paid by Buyer to Seller for gas delivered during such months shall be decreased proportionately to the reduction in gross heating value below one thousand (1000) BTU's per cubic foot. Buyer at no time shall be required to receive gas from Seller which has a gross heating value of less than nine hundred (900) BTU's per cubic feet.

The unit of volume for determining gross heating value only shall be one (1) cubic foot of gas saturated with water vapor at a base temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch.

11. Buyer shall pay Seller for all gas purchased and received by it at the delivery point hereunder the price of four cents (4¢) per thousand cubic feet, and shall also [fol. 1126] pay Seller one-half cent (½¢) per thousand

cubic feet on all said gas to reimburse Seller for its cost of gathering and delivering such gas to the delivery point hereunder, making an aggregate payment of four and a half cents (4½¢) per thousand cubic feet. Payments shall be made monthly by check, and for all gas delivered hereunder during any fiscal accounting month payment shall be made on or before the 25th day of the next following calendar month. A fiscal accounting month shall be from the 23rd day of one calendar month to the 22nd day, inclusive, of the next succeeding calendar month. Buyer shall accompany each monthly payment with a statement showing the gas delivered during the fiscal month for which settlement is being made. On Buyer's request Seller will execute and supply to Buyer a division order covering the gas to be sold and delivered hereunder. Said price of four (4) cents per thousand cubic feet is not more than the prevailing field price paid for gas at the wellhead in the Guymon-Hugoton Field, and one-half cent (½¢) per thousand cubic feet is a reasonable gathering charge for delivering the gas to Buyer's system.

If Buyer should at any time or from time to time hereafter purchase gas produced from the Guymon-Hugoton Field from a seller or sellers other than Seller herein under a contract or contracts surrounded by circumstances and containing terms and conditions similar to those surrounding and contained in this contract, and shall pay therefor a net price (as that term is hereinafter defined) which is more or less than the net price per thousand cubic feet at the time being paid to Seller herein, then upon the first delivery of gas to Buyer at such higher or lower net price to another seller or sellers, the net price to Seller herein shall be increased or reduced, as the case may be, to coincide with the weighted average net price being paid to such other or others. The term "net price" as used herein shall mean the total amount per thousand cubic feet paid by Buyer for the gas delivered by a seller into Buyer's main gathering system, less one-half cent (½¢) per thousand cubic feet, which shall be assumed for the purposes of this adjustment clause to be the gathering charge. In the event Buyer should purchase from any such other seller at a price delivered to Buyer at the wells of such other seller, then such delivered price shall be the net price in such case. It is the intention of this price adjustment provision that the price paid for gas hereunder shall be the prevailing field price

paid for gas at the wellhead in the Guymon-Hugoton Field, plus a reasonable gathering charge for delivering gas to the Buyer's system in said field, as determined by the price paid by Buyer to others than Seller as aforesaid.

Upon request of Seller, Buyer shall submit to Seller the records and charts from its measuring equipment, together with calculations therefrom, for Seller's inspection and verification, subject to return by Seller within twenty (20) days from receipt thereof.

Buyer further agrees that should it at any time hereafter make new contracts or amend existing contracts for gas produced in the Guymon-Hugoton Field so as to provide therein for a basis of measurement more favorable to the seller or sellers therein than that contained in paragraph 7 of this contract, then this contract shall thereupon be amended to provide for such more favorable basis of measurement.

12. All of the property and equipment installed by either of the parties hereto, under the terms of this contract, shall remain the property of that respective party, and each of the parties hereto shall have the right to remove its said equipment whenever it is no longer needed to enable such party to perform its obligations to the other party; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims for damages of whatsoever kind resulting from the operation, maintenance and reclaim of the property, machinery [fol. 1127] and equipment which it has installed.

13. Seller agrees to promptly notify by telephone the pressure dispatcher of the Buyer at Bartlesville, Oklahoma, or such other agent of Buyer as Buyer may indicate, of any interruptions affecting the delivery of gas hereunder and also, in order to meet current fluctuations in the requirements of Buyer, to begin, increase, decrease or suspend the delivery of gas hereunder on the telephonic orders of the pressure dispatcher or such other agent of the Buyer.

14. In the event payment for one hundred per cent of the gas purchased hereunder is made by Buyer to Seller, then

in that event Seller assumes full and complete responsibility for all payments that may accrue and become due to others on such gas so delivered and the Seller hereby agrees to hold the Buyer harmless from any and all claims for payment to such others on said gas.

15. Buyer shall not be bound by any transfer of any interest in the leases covered hereby, or of the payments herein provided to be made by Buyer, until it has been furnished with the original or a certified copy of such transfer or an abstract of title to the lands involved showing clearly such transfer of interest.

16. In the event the dedicated acreage shall, except as required by the provisions of Paragraph 17 hereof, be developed to a well density in excess of that of the acreage and mineral fee land now leased and owned by Buyer in the Guymon-Hugoton Field, Seller shall not connect with its gathering system the wells causing such excess density and shall not tender to Buyer, and Buyer shall be under no obligation to accept gas from the wells causing such excess density.

17. At any time Buyer may require Seller, upon six months' prior written notice, to further develop the dedicated acreage to the extent of drilling additional wells thereon and connecting them through Seller's gathering system into Buyer's system; provided, however, that Seller shall not be required to drill in excess of ten wells during any twelve months period, and provided further that Seller shall not be required to develop on a spacing pattern exceeding one well to six hundred forty acres.

18. Seller may not increase its sales under this contract by increasing the number of wells drilled beyond the number or in excess of the rate required by Buyer to be drilled under the provisions of Paragraph 17 hereof, or, unless so required, exceeding the said relative parity of well density set forth in Paragraph 16 hereof. But, nothing contained in Paragraphs 16 and 17 or this Paragraph 18 of this contract is intended to, nor shall anything therein contained authorize conduct by either party hereto that will, prevent or interfere with the development of Seller's leases or any thereof during the primary term thereof or the operation of any well or any such lease in such manner and to such extent as may be necessary to constitute a compliance by

Seller with the covenants, expressed or implied, of such lease relative to the development and/or operation thereof.

19. Seller will not tender gas to Buyer from wells an any acreage not at the time dedicated hereunder and effectually covered hereby.

20. In the event Seller shall fail, neglect or refuse to drill wells as required by Buyer, or to operate and maintain its said pipe line system and other facilities used in connection therewith in such manner as to enable Seller to deliver such gas to buyer, as elsewhere provided herein, then in that event the Buyer, after at least thirty days' written notice to and demand on Seller to correct or remedy the condition causing such failure, neglect or refusal and Seller's failure within said thirty day period to correct or [fol. 1128] remedy same (or if same cannot be corrected or remedied in thirty days, then Seller's failure to notify Buyer that Seller is proceeding with all reasonable dispatch to do so and Seller, having no notified Buyer, fails actually to proceed in good faith within said period to do so), then Buyer is hereby authorized, among other things, to enter upon the Seller's property to drill wells or to make repairs and/or additions to Seller's said equipment so that Buyer may secure such immediate delivery of gas hereunder as it may require. The actual cost of Buyer's drilling such wells or making such repairs and/or additions and Buyer's actual cost of operating Seller's said equipment during each such period shall be charged to Seller and same may be deducted from Seller's interest in and to gas theretofore run and not yet paid for, or from such interest in gas to be run subsequent to such periods, or otherwise collected. The provisions of this Paragraph 20 are subject to the provisions of Paragraph 25 of this contract.

21. Seller agrees that it will endeavor, in good faith, to keep and maintain all of its leases on said lands in full force and effect. If at any time Seller deems any of its leases to have been condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer an assignment of such lease or leases before surrendering same. If Buyer refuses to accept such assignment within three months after the date of tender thereof, then Seller may, at its option, release and surrender such lease or leases. If Buyer accepts such assignment, Buyer

shall pay to Seller the reasonable salvage value of the well, casing and equipment thereon and used in connection with the operation of said well.

22. The seasonal variation in the deliveries of gas by Seller and the receipts of gas by Buyer hereunder shall be in proportion to such seasonal variation in the receipts of all gas into the gathering system owned or operated by Buyer in the Guymon-Hugoton Field.

23. Meter measurements found by test to be in error because of mechanical reasons, or otherwise not reflecting actual passage of the gas, in an amount more than two (2) per cent of the actual amount delivered or received, shall be corrected and accounts adjusted accordingly, but the period of adjustment shall not exceed thirty (30) days preceding the test, and all claims of either party as to the gas delivered or received otherwise than as shown by said meters must be preferred in writing by such respective party within sixty (60) days from the date of the commencement of such claimed discrepancy and all claims of each party hereto concerning either the comparative amount, as related to other wells, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said period of sixty (60) days.

24. Additional points of delivery for gas to be sold and purchased under this agreement may be required from time to time and may be made, after agreement thereto between the parties, by means of supplemental written instruments based upon and modifying this contract.

25. In the event of Seller's inability to deliver into Buyer's pipe lines the quantities of gas contemplated herein because of inadequate pipe line facilities of Buyer between the point of delivery herein and Buyer's Straight compressor station, then Buyer agrees to proceed with due diligence to construct such additional pipe line facilities between said point of delivery and said compressor station as are necessary to enable Seller to deliver such quantities of gas to Buyer.

If thereafter Seller shall be unable to deliver the quantities of gas contemplated herein either because of the decline in the natural pressure of Seller's wells or because of inadequate pipe line facilities of Buyer between the point of delivery herein and Buyer's Straight compressor station,

Buyer may call upon Seller promptly to construct, operate and maintain, at its own cost, risk and expense, gas compressing equipment of adequate size and design to make [fol. 1129] such deliveries of gas. In the event that Buyer does not call upon Seller to construct such compressing equipment, Seller may request Buyer to construct such compressing equipment and should it do so, then Buyer shall construct, operate and maintain the same at its own cost, risk and expense; should Buyer decline to do so, then Seller may proceed to construct, operate and maintain, at its own cost, risk and expense, the necessary compressing equipment.

In the event Seller constructs compressing equipment, as herein provided, Buyer shall reimburse Seller monthly for its cost in connection therewith computed as follows:

(1) A sum estimated by the parties to be sufficient to amortize over the estimated useful life of such facilities the actual reasonable cost of such facilities (Including (a), interest at the rate of four per cent (4%) per annum for the actual period of construction, (b) five per cent (5%) of actual construction cost for general overhead if such facilities are constructed by the Seller or two per cent (2%) of the total contract price if constructed for Seller by others on a turn-key basis), less the net salvage value thereof when no longer needed for compression purposes;

(2) A sum for interest on the investment in the facilities equal to four per cent (4%) per annum of the unamortized cost of such facilities;

(3) A sum equal to the actual cost of operating and maintaining the facilities, including labor, fuel, supplies, taxes (other than income taxes), insurance and other direct operating and maintenance cost, plus Two Hundred Dollars ($200.00) per month as an overhead charge.

Any unamortized cost of such facilities, not paid by the Buyer as provided under (1) above, will be paid in cash by the Buyer to the Seller, when said facilities are no longer needed for said purposes. The Buyer shall have the option of purchasing said facilities, when no longer needed for said purposes, at a price equal to the "net salvage value" as used in (1) above.

It is understood that such payments and/or method of payment may be adjusted from time to time by the parties hereto as may be necessary to effectuate the understandings of the parties as expressed herein.

In the event Seller shall use said compressing facilities to compress gas other than that to be delivered to Buyer hereunder, the reimbursements of Seller by Buyer herein provided for shall be reduced to the extent that such reimbursements shall be made by Buyer on a pro rata basis for all gas delivered to Buyer through such facilities.

26. Failure of Seller to develop production or construct facilities as required hereby, in addition to the remedies herein elsewhere provided, shall give Buyer the right to demand of Seller, in writing, a compliance with the defaulted requirements, and, if Seller fails within thirty (30) days after such demand to comply or to proceed in good faith and with due diligence with compliance therewith, then Buyer shall have the further right to terminate this contract upon ninety (90) days written notice to Seller.

27. All the terms, covenants and agreements herein shall run in favor of and be binding upon the parties hereto, their successors and assigns; provided that, except for assignments by Seller to any other corporation with which Seller may consolidate or merge, or assignments by Seller to a subsidiary or affiliated company of Seller, Seller shall not assign, in whole or in part, this contract or *or* the [fol. 1130] dedicated acreage unless Buyer shall consent thereto in writing, but Buyer agrees that it will not arbitrarily or unreasonably refuse to give its consent to any such assignment, nor will it refuse to give its consent to any such assignment if it be to a responsible person, firm or corporation who is deemed to be capable of performing, and who in connection therewith expressly assumes and agrees to perform, the covenants hereof resting upon Seller.

28. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the

obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a), in those instances where any party hereto is required to obtain servitude, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses, and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

29. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

In witness whereof, the parties hereto have executed this instrument in duplicate, one for Seller and one for Buyer, the day and year first above written.

By ——, Seller; Cities Service Gas Company, by ——, Vice President, Buyer.

Attest: ——, Secretary.
Attest: ——, Asst. Secretary.

[fol. 1131] Exhibit 59—is a Demurrer, Motion to Dismiss, and Motion for Judgment Upon the Pleadings and Evidence, filed in the Office of the Secretary and hereinbefore copied and indexed, therefore is not copied at this point but reference is made to the index.

Exhibit 60—is a Motion for Judgment Upon the Pleadings and Evidence, filed in the Office of the Secretary, hereinbefore set out and indexed, therefore is not copied at this point.

Exhibit 61—is a Motion to Dismiss, filed in the Office of the Secretary and hereinbefore set out and indexed, therefore is not out at this point.

Exhibit 62—is a Demurrer, filed in the Office of the Secretary, hereinbefore set out and indexed, therefore is not copied at this point.

Exhibit 63—is an Order Continuing Cause from July 11, 1946 to September 9, 10, and 11, 1946, hereinbefore set out and indexed, and therefore not copied at this point.

Exhibit 64—is a Motion to Allow Inspection and Copy or Permission to Take Copy, filed in the Office of the Secretary on August 10, 1946, hereinbefore copied and indexed, therefore is not copied at this point.

[fol. 1132] Exhibit 65—is entitled Response to Application for Order Compelling Inspection of Records, the original of which was filed in the Office of the Secretary, hereinbefore copied and indexed, therefore is not again copied at this point.

EXHIBIT 66—is entitled Answer of Respondent Cities Service Gas Company to Petition in Intervention, the original of which was filed in the Office of the Secretary, hereinbefore copied and indexed, therefore is not copied at this point.

EXHIBIT 67—is entitled Motion and is a Motion to segregate and separate the evidence, etc., the original of which was filed in the Office of the Secretary, hereinbefore copied and indexed, therefore same is not again copied at this point.

(Here follows 1 Exhibit 68, photolithograph side folios 1133-1134.)

Exhibit 68 Not Reproducible

[fol. 1135] EXHIBIT 70

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 11. Order No. 17528

In the Matter of the Application of WALKER T. POUND, Conservation Officer, for Amendment of General Rules and Regulations and Promulgation of Additional Rules and Regulations Governing Drilling and Production of Oil and Gas Wells in the State of Oklahoma

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 28th day of September, 1944, at 10 o'clock, A. M., upon application filed by the Conservation Officer and pursuant to order of the Commission setting the cause for hearing and notice published as required by law; at which time the Conservation Officer and Conservation Attorney and various operators interested in production of oil and gas in the State of Oklahoma appeared, and by order of the Commission the cause was continued for hearing on the 9th day of November and the 21st day of December 1944, and came on for final hearing before the Commission the 24th day of January, 1945, at 10 o'clock A. M., at which hearing the Conservation Officer and Conservation Attorney were present and appearances were entered by practically all of the oil companies doing business in the State of Oklahoma; whereupon testimony was presented, and the Commission, being well and sufficiently advised in the premises, announced the granting of the following order, finding as follows, to-wit:

[fol. 1136] Findings

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application

and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That in 1917, soon after enactment of the first oil and gas conservation laws in the State of Oklahoma, which authorized the Corporation Commission to control the drilling and production of oil and gas wells and transportation of oil and gas, the Commission promulgated general rules and regulations in its Order No. 1299; and pursuant to the 1933; conservation law, the Commission promulgated rules and regulations governing oil production in the State, which rules have been amended from time to time.

3. That such great progress has been made in scientific and geological information and the conception of oil and gas conservation has so enlarged that the rules and regulations under which the Commission has been operating have in many instances become obsolete, and new general rules and regulations should be adopted to conform to present day operating methods and scientific knowledge.

4. That realizing the necessity for proper rules and regulations to aid the Commission in conservation of the oil and gas resources for the State of Oklahoma and its citizens, committees have been working for more than a year pursuant to an application filed by the Conservation Officer on July 19, 1943, in Cause CD No. 859; that no formal [fol. 1137] hearing was held thereon and application in this cause was filed on August 30, 1944; that said committees are composed of representatives of the oil and gas industry in the State of Oklahoma, to-wit: General Committee of Operators, W. A. Delaney, Jr., chairman; Coordinating Committee, E. G. DeParade, Chairman; Committee on Drilling and Development, William T. Payne, chairman; Committee on Oil Production Methods, Fred Lichtenheld, chairman; Committee on Gas Production, E. C. McAninch, chairman; Committee on Secondary recovery and Pressure Maintenance, Jack Abernathy, chairman; Committee on Plugging and Abondoning, M. M. Tripplehorn, chairman; Committee on Transportation and Purchasing, A. L. Dade, chairman; and Legal Committee, Alvin Richards, chairman; that said committees have had more than 100 meetings, and approximately sixteen general meetings have been held by the industry together with the Conservation Department; that after each general meeting a revised copy

of proposed general rules and regulations was sent to all interested parties and circulated generally throughout the *the* industry, and after thorough consideration and discussion, the general rules and regulations hereinafter set out in this order were generally approved by all of said committees.

5. That under the statutes of the State of Oklahoma it is the duty of the Corporation Commission to adopt general rules and regulations under which the oil and gas industry shall operate, and the following rules and regulations meet the requirements of said statutes; that while they are not unanimously agreed to by every operator in the State, and in some instances represent a compromise of opinions, it is the opinions of the Corporation Commission that they are [fol. 1138] fair and just and are the best possible rules and regulations that can be adopted at this time, and will not work undue hardship on any operator.

6. That many geologists and engineers testified in this cause as representatives of the various companies that they were familiar with the rules and regulations of other oil and gas producing states, and that from the standpoint of protecting correlative rights, prevention of waste, insuring greatest recovery of oil and gas, the rules hereinafter set out are better and more up to date than those of the other states.

7. That under the statutes of the State of Oklahoma this Commission must prescribe rules of practice and procedure for the Conservation Department; that the rules of procedure originally adopted likewise need revision, as hereinafter set out in this order.

8. That for the convenience of operators the rules and regulations set out in this order are divided as follows; Definitions; General Rules, commencing with 101; Drilling and Development, commencing with 201; Oil and Gas Production from Oil Pools, commencing with 301; Gas Production Methods, commencing with 401; Secondary Recovery and Pressure Maintenance, commencing with 501; Plugging and Abandoning, commencing with 601; Transportation, Purchasing, and Reporting, commencing with 701; followed by Rules of Practice and Procedure.

9. That the rules and regulations set out in this order should supersede all general rules and regulations hereto-

fore adopted by this Commission pertaining to conservation of oil and gas, and the rules of procedure and all of said general rules should be repealed.

10. That in order to prevent waste of oil and gas, protect [fol. 1139] correlative rights, and secure the greatest ultimate recovery of oil and gas from the various pools in the State of Oklahoma, it is necessary that the rules and regulations hereinafter set out be adopted.

ORDER

It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma that the following general rules and regulations for production and conservation of oil and gas in the State of Oklahoma, and the rules of practice and procedure pertaining thereto, be, and same are hereby, adopted.

[fol. 1140] Preamble

These rules and regulations of the Commission, and all amendments thereto, are designated and adopted for the conservation of oil and gas, and to prevent or tend to prevent waste; and they are not to be interpreted as prescribing due care, or want of due care, in oil and gas leasehold operations, and are not intended to establish standards in any tribunal other than the Corporation Commission as to what shall or shall not constitute prudent operation.

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Definitions

(These definitions are provided for the sole purpose of proper interpretation of Corporation Commission rules and regulations.)

1. Allocated and Non-Allocated Oil Pools—Refer to Rule 302.

2. Allocated Production Shall mean oil or gas, or both oil and gas, produced under the direct supervision and regulation of the Commission.

3. Barrel shall mean 42 (US) gallons at 60° F. at atmospheric pressure.

4. Blow-Out shall mean the uncontrolled escape of oil or gas, or both, from any well as a result of encountering high formation pressures.

5. Blow-Out Preventer shall mean a heavy casinghead control fitted with special gates or discs which may be closed around the drill pipe, or which completely closes the top of the casing if the pipe is withdrawn.

6. Capacity of a Well to Produce shall be such as is ascertained and determined by the Commission pursuant to Rule 306 of these rules and regulations.

7. Casing Pressure shall mean the pressure within the casing or between the casing and tubing at the well head.

8. Carrier shall mean any person, firm, or corporation moving or transporting oil or gas away from a lease.

[fol. 1144] 9. Circulation shall mean the passing of fluid down through the drill pipe and up to the surface.

10. Commission shall mean the Corporation Commission of the State of Oklahoma.

11. Common Source of Supply or Pool—The term "common source of supply" shall comprise and include that area which is underlaid, or which from geological or other scientific data, or from drilling operation, or other evidence appears to be underlaid, by a common accumulation of oil or gas; provided that, if any such area is underlaid, or appears from geological or other scientific data or from drilling operation or other evidence, to be underlaid by more than one common accumulation of oil or gas separated from each other by strata of earth and not connected with each other, then such area shall as to each said common accumulation of oil or gas be deemed a separate common source of supply.

12. Condensate shall mean the liquid recovered at the surface that results from condensation due to reduced pressure and temperature of petroleum hydrocarbons existing in the gaseous phase in the reservoir.

13. Conservation Department shall mean the department of the Commission in charge of the administration and enforcement of its rules and regulations relating to oil and gas.

14. Conservation Officer shall mean the person in official charge of the Conservation Department.

15. Cubic Foot of gas for reporting purposes only shall be the volume of gas contained in one cubic foot of space at an absolute pressure of 16.4 pounds per square inch and at a temperature of 60° F.

[fol. 1145] 16. Day shall mean a period of twenty-four (24) consecutive hours. For accounting purposes only, it shall be from 7:00 AM to 7:00 AM the following day.

17. Date of Completion shall mean the date that the well first produces oil into the lease tanks through wellhead equipment.

18. Development shall mean any work which actively looks toward bringing in production, such as erecting rigs, building tankage, drilling wells, etc.

19. Directional Drilling shall mean the intentional changing of the direction of the well from the vertical when drilling.

20. Field shall mean the general area underlaid by one or more sources of supply.

21. Flowing Well shall mean any well from which oil or gas is produced naturally and without artificial lifting equipment.

22. Gas Allowable or Allowable Gas shall mean the amount of natural gas authorized to be produced from any well by order of the Commission.

23. Gas shall mean any petroleum hydrocarbon existing in the gaseous phase.

24. Gas Repressuring shall mean the injection of gas from the surface into a common source of supply to restore or increase the gas energy of a reservoir.

25. Gas Lift shall mean any method of lifting liquid to the surface by injecting gas into the well from which production is obtained.

[fol. 1146] 26. Gas-Oil Ratio shall mean the ratio of the gas produced in cubic feet to the barrel of pipeline oil concurrently produced during any stated period.

27. Illegal Oil shall mean oil which has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the Commission, as distinguished from oil produced within the state not in excess of the amount so allowed by any such rule, regulation, or order, which is "legal oil".

28. Illegal Gas shall mean the gas which has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the Commission, as distinguished from gas produced within the state not in excess of the amount so allowed by any such rule, regulation, or order, which is "legal gas".

29. Log or Well Log shall mean a systematic detail record of formations encountered in the drilling of a well.

30. Meter shall mean an instrument for measuring and recording the volumes of gases or liquids.

31. Mud-Laden Fluid shall mean any approved mixture of water and clay or other material as the term is commonly used in the industry, which will effectively seal a formation to which it is applied in a well bore.

32. Multiple Zone Completion shall mean the completion of any well so as to permit the production from more than one common source of supply with such common sources of supply completely segregated.

[fol. 1147] 33. Oil or Crude Oil shall mean any petroleum hydrocarbon produced from a well in liquid phase.

34. Oil Allowable or Allowable Oil shall mean the amount of oil authorized to be produced from any well by order of the Commission.

35. Operator shall mean any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.

36. Overage or Overproduction shall mean the oil or gas produced from a well in excess of the allowable set by the Commission for a given period of time.

37. Owner shall mean the person or persons who have the right to drill into and to produce from any field or reservoir, and to appropriate the production either for himself, or for himself and others.

38. Person shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

39. Plug shall mean the closing off, in a manner prescribed by the Commission, of all oil, gas, and water bearing formations in any producing or non-producing well bore before such well is abandoned.

40. Pool. See "Common Source of Supply".

41. Potential shall mean the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the Commission.

[fol. 1148] 42. Pressure Maintenance shall mean the injection into a reservoir of gas or other fluids, either to maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

43. Producer—See "Operator" or "Owner".

44. Productivity Index shall mean the daily production of oil in barrels per unit pressure differential between the static reservoir pressure and the flowing pressure during flow at a stated rate.

45. Purchaser or Transporter shall mean any person who acting alone, or jointly with any person or persons, shall directly or indirectly purchase or transport by any means whatsoever, or otherwise remove, from any lease, oil or gas produced from any common source of supply in this State, excepting royalty portions from leases owned by that person.

46. Repressure—See "Gas Repressuring".

47. Reservoir—See "Common Source of Supply".

48. Reservoir Pressure shall mean the static or stabilized pressure in pounds per square inch existing at the face of the formation of an oil or gas well.

49. Secretary shall mean the duly appointed and qualified Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence of the Secretary, his inability or disqualification to act.

[fol. 1149] 50. Separator shall mean an apparatus for separating oil, gas, and water as they are produced from a well at the surface.

51. Shooting shall mean exploding nitroglye-rine or other explosive in a well bore, or perforating the pipe.

52. Underage or Underproduction shall mean the volume of allowable oil or gas not actually produced by a well during any given period of time.

53. Vacuum shall mean pressure below the prevailing pressure of the atmosphere.

54. Waste, in addition to its ordinary meaning, shall mean "physical waste" or "economic waste" as these terms are generally understood in the oil and gas industry, and shall specifically includ- (a) the inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, testing, operating, or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately recoverable from any pool in this State under prudent operations; and (b) the inefficient storing of oil; the producing of oil or gas in excess of transportation or marketing facilities or of reasonable market demand; the locating, spacing, drilling, equipping operating, or producing of a well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil [fol. 1150] or gas, and the use of gas from a well producing gas only for the manufacture of carbon black or similar products *products* predominately carbon unless specifically authorized by the Commission.

General Rules

101. Effective Scope of Rules and Regulations

All rules and regulations of general nature herein promulgated to prevent waste, assure the greatest ultimate recovery from the reservoirs of this State, and protect the correlative rights of all interests, shall be effective throughout the State of Oklahoma, and be in force in all pools except as amended, modified, altered, or enlarged in specific individual pools by orders now in effect or hereafter issued by the Commission.

103. Waste Prevented

All operators, contractors, drillers, carriers, gas distributors, or other individuals, drilling for or producing oil or gas or piping oil or gas for any purpose shall conduct their operations in a manner that will prevent waste of oil and gas as herein defined, and shall not wastefully utilize

oil or gas, or allow either to leak or escape from a natural reservoir, or from wells, tanks, containers, pipes, or other storage, conduit, or operating equipment.

103. Duties of the Conservation Department

It shall be the duty of the Conservation Department to administer and enforce all the rules and regulations of the Corporation Commission relating to oil and gas.

[fol. 1151] 104. Authority of Conservation Officer and Agents

The Conservation Officer, his agents, assistants, or employes, shall have the right at all times to go upon and inspect any oil and gas properties, pipelines, tank farms, and pump stations, for the purpose of making any investigation or tests to ascertain whether the provisions of these rules, or any individual pool rules, are being complied with, and shall report to the Commission any violation thereof.

105. Access to Records by Conservation Department

Any agent of the Conservation Department shall have access to all well records, wherever located. All companies, operators, drilling contractors, drillers, or service companies, shall permit any such agent to come upon any lease or property operated or controlled by them, and to inspect any records of wells, and to have access at all times to any and all records of said wells; provided that, information so obtained by conservation agents shall be considered confidential information and shall be reported to, and only to, the Commission, or its authorized agents.

106. Service Company Reports

Upon request made by the Conservation Officer, service companies shall furnish and file reports and records showing gun perforating, squeeze cementing, shooting, or chemical treatment on any particular well or wells.

[fol. 1152] 107. Naming of Pools

All oil and gas pools in the State shall be named by the Commission.

108. Regulation and Classification of Pools

(a) When the Commission finds, upon hearing, that oil or gas production from any common source of supply exceeds the current market demand therefor, or finds that the operation of the reservoir should be regulated in order to prevent waste, increas- ultimate recovery, or protect correlative rights, the Commission shall thereupon promulgate appropriate pool rules and regulations to accomplish such objectives. Where any of the above findings are made by the Commission, the total production from the pool may be restricted and equitable allocation made to the various wells located therein, or the operation of the reservoir may be otherwise regulated and controlled to insure proper and adequate conservation.

(b) Any allocated pool, or any pool subjected to pool regulation by the Commission as set out in paragraph (a) shall be classified by the Commission, upon hearing as an oil pool, gas pool, or condensate pool. All pool rules and regulations so promuigated shall be based on operating and technical date and shall be consistent with the characteristics attributable to each classification.

(c) The fact that reservoir date at one stage of development of pool indicates and results in its classification as either an oil, gas, or condensate pool shall not preclude the right nor the obligation of the Commission thereafter to [fol. 1153] reclassify and amend the rules and regulations in such pool upon the presentation of additional reservoir data at a subsequent hearing.

109. Forms Upon Request

Forms required by the Conservation Department will be furnished upon request.

Drilling and Development

201. Bonding Requirement

The Commission may, at any time, within its discretion or upon complaint received from any person interested in the property to be drilled, or in any adjacent property, require from the owner of the lease, or the person, firm, corporation, or association drilling the well, a good and

sufficient bond in a sum not less than Two Thousand Five Hundred Dollars ($2,500.00) running to the State of Oklahoma, conditioned that said well, upon abandonment, shall be plugged in accordance with the rules and regulations of the Commission. Said bond shall remain in force and effect until the plugging of said well is approved by the Conservation Department, or the bond is released by the Commission. It is, however, provided that any person, firm, company, or corporation may, in lieu of such bond, file with the Commission either a good and sufficient blanket bond in a sum not less than Ten Thousand Dollars ($10,000.00), covering all wells drilling or to be drilled in the State of Oklahoma by the principal in said bond, or may submit to the Commission its financial statement indicating a net financial responsibility equal to or in excess of the blanket bond, and upon acceptance and approval by [fol. 1154] the Commission of said bond, or in lieu thereof, said financial statement, such compliance shall be in full compliance with the above provisions requiring an individual well bond.

202. General Well Spacing Requirements

(a) All wells drilled for oil or gas to a common source of supply in excess of 2500 feet shall be located not less than 600 feet from any other producible or drilling oil or gas well when drilling on the same lease to the same source of supply, and not less than 330 feet from any property line or lease line unless otherwise ordered by the Commission upon hearing, or unless otherwise provided for in an authorized secondary recovery project; provided and except that, in drilling to a known common source of supply that is less than a depth of 2500 feet, wells shall be located not less than 300 feet from any other producible oil or gas well or drilling well in said source of supply, and not less than 165 feet from any property line or lease line, unless otherwise specifically permitted by order of the Commission; provided, however, that the completed depth of the discovery well shall be recognized as the depth of the pool for spacing purposes.

(b) As provided by Section 3, Article 1, Chapter 59, Session Laws of 1935, the Commission may establish well spacing and drilling units in any common source of supply. (Section 87, Title 52, sub-section (c), O. S. 1941.)

[fol. 1155] (c) If the operator having the right to drill a well in any spacing unit has given notice of intention to drill, as provided by sub-section (c). Section 87, Title 52 O. S. 1941, to another owner or lessee also having a right to drill a well within said unit either by reason of ownership of a separately owned tract or by reason of an undivided ownership under all or a part of said unit, and such owner or lessee has not elected to participate in said proposed well, the operator proposing to drill may make application to the Commission for an order defining, fixing, and adjusting the correlative rights and obligations of all persons interested in said unit.

When such application is filed, the Commission shall enter an order setting a day for a hearing thereon, and the applicant shall cause personal service of a copy of said order to be made on all persons, other than royalty owners, and the applicant, whose rights are to be determined. Such service shall be made in the manner provided by statute for service of summons, at least ten (10) days before the date of such hearing. The officer making such service shall make his return to the Commission. The Commission shall cause a copy of said order to be published one time and at least ten (10) days before the date of said hearing in a newspaper of general circulation in the county in which the affected spacing unit is located. If personal service cannot be made on any operator, lessee, or owner whose rights are to be determined, applicant shall file with the [fol. 1156] Commission an affidavit setting forth the facts, and the date of such hearing shall be continued and notice of the hearing shall be published in the manner and for the times provided by statute for publication service, and a copy of the notice shall be mailed to the last address, if known, of the person on whom such publication service is sought.

At the hearing all parties will be given an opportunity to present evidence as to the order which will most equitably protect the rights of all affected parties, and after hearing such application the Commission shall enter an order on said application prescribing where each operator or owner may drill within the unit and adjudging what interest each owner or operator shall have in the well or wells, or the production therefrom, and specifying the ratio of division between the wells of the allowables from time to time

granted such unit and otherwise defining, fixing, and adjusting the correlative rights and obligations of all persons interested in said unit.

203. Notice of Intention to Drill or Recomplete

Prior to the commencement of operations, notice shall be delivered to the Commission of intention to drill any well for oil or gas, on a form prescribed by the Commission. Prior to the commencement of recompletion operations, notice shall likewise be delivered to the Commission of intention to develop by deepening or plugging back to any source of supply other than the existing producing [fol. 1157] horizon. Such notice shall include the name and number and exact location of the well; the approximate date operations will begin, the estimated completed total depth, and in the case of recompletion, the original total depth and the total depth at which the well is to be recompleted. It shall also specify the type of drilling equipment, whether cable tool or rotary, to be used.

Notice of intention to drill or recomplete shall be accompanied by a certified lease plat on the form prescribed by the Commission, showing lease boundary lines, acreage contained in the lease, the location of the proposed well with reference to the nearest property lines, and the nearest producible oil or gas well. Measurements and other distances are to be shown in feet.

204. Well Completion and Work Over Reports

(a) Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, a completion report shall be filed with the Commission, on a form prescribed by the Commission. Such report shall include name, and number, and exact location of the well; farm name; date of completion; date of first production, if any; name and depth of reservoir, or reservoirs if a multiple completion, from which well is producing; initial production test, including oil, gas and water, if any; description of the initial test, whether by flow through tubing or casing or by pumping, and if by pumping, type of pump, whether plunger, rotary [fol. 1158] or hydraulic; casing and cementing record; casing perforations, if any; shooting or chemical treatment record, and a true and correct log of the well; such report

to be signed and sworn to by an authorized representative of the operator.

(b) Within thirty (30) days after the completion of any workover or repair operation which results in a daily average production in excess of twenty-five (25) barrels of oil, or 2,000,000 cubic — of gas, a supplemental well completion report shall be filed with the Commission, showing the nature of such work-over or repair, whether shooting, acidizing, gun-perforating, ripping, plugging back, deepening, or squeeze cementing.

205. Posting of Sign at Well

Within thirty (30) days of the completion of any producing oil or gas well, a sign shall be posted and maintained at the location, showing ownership of the well, name of farm, number of the well, and legal description of the well.

206. Drilling Procedure

Unless altered, modified, or changed for particular common sources of supply, upon hearing before the Commission, the following rules on "Drilling Procedure" shall apply to wells drilled with rotary tools:

(a) Surface Casing Requirements and Cementing for Anchorage.

[fol. 1159] Suitable and safe surface casing shall be used in all wells. In all wells drilled in areas where pressure and formations are unknown, sufficient surface casing shall be run to reach a depth below all domestic fresh water levels, and shall be of sufficient size to permit the use of an intermediate string of casing. Surface casing shall be set in or through an impervious formation, and shall be cemented by the pump and plug or displacement method with sufficient cement to circulate to the top of the hole.

In wells drilled in areas where subsurface conditions have been established by drilling experience, surface casing size at the operator's option shall be set and cemented to the surface by the pump and plug or displacement method at a depth sufficient to protect all domestic fresh water.

Cement shall be allowed to set a minimum of twelve (12) hours under pressure before drilling the plug.

(b) Blow-out Preventers and Casingheads

In all proven areas, the use of blow-out equipment shall be in accordance with established practice in the area.

In unproven areas (wildcat wells) all drilling wells shall be equipped with a master-gate, or its equivalent, an adequate blow-out preventer, together with a flow line valve of the proper size and working pressure. The entire control equipment shall be in good working condition at all times.

[fol. 1160] (c) Cementing and Testing of Flow String and Connections

If and when it becomes necessary to run a flow string, such flow string shall be cemented by the pump and plug method, and shall be properly tested by the pressure method before cement plugs are drilled.

207. Cable Tool Drilling Rules

Before commencing to drill, proper and adequate slush pits shall be constructed for the reception of mud of sufficient quality and quantity so that such mud may be available if and when the hole is plugged.

Where cable tools are used, sufficient surface casing shall be set to protect all domestic fresh water levels, and such surface casing shall be tested by bailing to insure a shut-off before drilling below the casing point proceeds.

No natural gas which may be encountered in any section of a cable tool drilled hole above the ultimate objective may be permitted to blow while drilling proceeds, but must be shut off either by mudding or by the running of a string of casing, and if the latter method is used, such string of casing must be tested by bailing to insure shut-off before drilling proceeds.

Casing program adopted for cable tool drilled wells must be so planned as to protect any potential oil or gas bearing horizons penetrated during drilling from infiltration of injurious waters from other horizons, and to prevent the migration of oil or gas from one horizon to another.

[fol. 1161] 208. Fire Hazards on Surface

Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 100 feet from the well location, tanks, and separator. All waste oil shall be removed to a distance of at least 100 feet from the well location, tanks, and separator. All waste oil shall be burned or disposed of in a manner to avert creating a fire hazard.

209. Directional Drilling

Controlled directional drilling, when the intent is to direct the bottom of the hole away from the vertical, shall be permitted only upon hearing before the Commission. In its application for such hearing, applicant shall state clearly the depth, exact surface location of the well bore, proposed direction of deviation, and proposed horizontal distance between the bottom of the hole and surface location. If an order be granted, applicant shall file with the Commission within thirty (30) days after completion of the well a copy of survey of the hole certified by an established well-surveying organization.

210. Deviation from the Vertical

Unless otherwise ordered by the Commission upon hearing, all wells shall be drilled in a manner so that the horizontal distance between the bottom of the hole and the location of the top of the hole shall be at all times at a minimum.

[fol. 1162] 211. Multiple Zone Completions

The multiple zone completion of any well may be permitted only by order of the Commission upon hearing.

The application for such hearing shall be accompanied by an exhibit showing the location of all wells on applicant's lease and all offset wells on offset leases, and shall set forth all material facts on the common sources of supply involved, and the manner and method of completion proposed.

212. Notice of Fires or Blow-Outs

In case of a fire or blow-out, the operator shall immediately notify the Conservation Officer by telephone or telegraph.

Oil and Gas Production from Oil Pools

301. Production Tests on New Wells and Recompleted Wells

On all new wells, and on all recompleted wells where recompletion results in production in excess of twenty-five (25) barrels per day, an initial production test shall be taken and reported on a well completion report form as prescribed by the Commission.

In areas where special pool rules have not been prescribed by the Commission, the initial production tests on flowing wells shall be taken for not less than four (4) consecutive hours. Such tests shall show oil production, water production, and gas-oil ratio by hours and API gravity of the oil. Casing and tubing pressures shall also be taken during such production tests and reported likewise by hours.

[fol. 1163] All new or recompleted wells producing by artificial lift shall be given an initial production test of not less than eight (8) consecutive hours, and shall be reported showing the oil production, net gas-oil ratio, water production, and the API gravity of the oil.

In event previous special pool rules have been ordered by the Commission in any separate common source of supply, the initial production test shall be taken and reported in accordance with such special pool orders.

302. Allocated and non-Allocated Pools

(a) When, upon hearing as provided in Rule 108, the Commission finds that the total production from a pool, or from any well in a pool, should be regulated, such pool shall be classified as an "Allocated Pool".

(b) The Commission may remove a pool from an allocated to a non-allocated classification when, upon hearing, the Commission finds that further specific regulation and control by it is unnecessary to restrict production to the market demand, and will not aid in the prevention of waste, or tend to increase the ultimate recovery from the reservoir, and will not adversely affect correlative rights.

(c) To assist the Commission in the exercise of its duties, the Commission may require from time to time the presentation of such data and facts as may be necessary to indicate reservoir performances and conditions in any pool.

The Commission may also, through its representatives, witness or supervise the taking of any reservoir performance [fol. 1164] tests and keep such records as it deems necessary to properly regulate the operation of any pool. Any tests requested by the Commission may be witnessed by any operator in the pool.

303. Establishment of Allocated Pool Allowables

The Commission shall, upon hearing, determine for each allocated pool for each calendar month the amount of oil and gas, or either of them, for which there is a current daily market demand which can be produced without waste and without unreasonable discrimination as between pools; and after such determination the Commission shall set the daily allowable for each pool.

304. Temporary Allowable for Wells in Newly Discovered Pools

All newly completed oil and gas wells in any new pool or area shall have a temporary maximum daily oil allowable of 150 barrels, or a temporary maximum daily gas allowable of not to exceed 500,000 cubic feet of gas a day, whichever is produced first. Such newly completed oil or gas wells shall have such temproary allowable for not to exceed sixty (60) days, and shall be allowed to produce thereafter only pursuant to the classification and allocation determined by the Commission upon hearing; provided that, upon application to the Conservation Officer, he is authorized to permit a reasonable testing period during which oil or gas in excess of the amounts herein fixed may be produced, if such oil or gas can be produced without waste.

[fol. 1165] 305. Distribution of Allowables within Allocated Pools

(a) Requirements for Flat Per Well Allowables

The Commission, upon hearing, may order a flat per well allowable in any allocated pool in which reservoir conditions are not sufficiently known to determine proper factors for the establishment of any other method of allo-

cation, or in which the following facts are found by the Commission to exist:

(1) The producing wells in the pool are located on a reasonably uniform pattern;
(2) Well conditions are approximately the same;
(3) Correlative rights are adequately protected.

Periodically, and as may be ordered by the Commission, all wells in such pool shall be tested, and any well incapable of producing its flat allowable shall thereafter have its allowable limited to its ability to produce.

(b) Use of Capacity to Produce in Determining Allowables

When it appears to the Commission that a flat allowable is not adequate in a particular pool for the allocation of production, it shall, upon hearing, determine the capacity of each of the wells in said pool to produce during the ensuing allocation period; and in so doing, it shall give due consideration to available known reservoir facts at the time, and it may utilize such of the known facts as the Commission deems proper for the distribution of the total pool allowable to the individual wells located therein, so as to prevent waste, increase ultimate recovery, promote orderly development and production, and protect the correlative [fol. 1166] rights of all interested persons. In its determination of the capacity of each of the wells to produce during such subsequent allocation period, the Commission may consider any one or more of the following factors; (a) uniformly conducted production or potential tests; (b) productivity indices; (c) productive drainage area attributable to each well; (d) effective thickness of the producing section; (e) reservoir pressures; (f) gas production and individual well gas-oil ratios; (g) type of water encroachment and water production; and (h) any other pertinent and related data. Any and all well tests shall be such as will not cause waste in the well or injury to the reservoir.

For such allocation purposes, the capacity of each well to produce oil, as herein provided; shall be ascertained and redetermined by the Commission, upon hearing, at intervals of not to exceed six (6) months.

(c) Minimum Well Allowables

The minimum well allowable in any pool shall be twenty-five (25) barrels daily unless a higher minimum is ordered for a specific pool by the Commission upon hearing.

(d) Rate Allowable to Be Produced

Production from every oil well is hereby limited so as not to exceed twice its daily allowable during any twenty-four (24) hour period unless otherwise specifically granted in writing by the Conservation Officer, or ordered by the Commission, except during prescribed testing periods.

[fol. 1167] (e) Basis of Calculating Allowables

Allowables in allocated pools, except those allocated on a lease basis by specific order of the Commission upon hearing, shall be granted on an individual well basis, and shall be so set out on the monthly allowable schedule. Where allowables are granted on a well basis, the operator shall be required to produce the allowable of each well from that well, and no part thereof from any other well; provided, however, that such requirement shall be qualified as to accuracy of measurement in accordance with operating conditions and lease measureing equipment.

The granting of allowables and the production of oil on a lease basis may be permitted by the Commission where there exists more than one well on individual leases, provided such authorization is permitted upon hearing before the Commission. Upon such hearing the Commission may, where the facts warrant, determine the capacity at which the lease as an entirety may produce, and allocations may be made on a lease basis and the oil produced on a lease basis without regard to the number of wells located thereon.

(f) Overage and Underage Adjustment

All overage shall be deducted from the monthly current allowable. In the event a lease is overproduced in an amount in excess of the current monthly allowable, all wells on the lease shall be shut in and no oil produced [fol. 1168] during the succeeding month unless otherwise specifically ordered by the Commission. All underage when in excess of thirty (30) days' allowable shall be canceled unless the operator presents evidence to the Conservation

Officer or to the Commission that it can be made up without waste, in which event said underage may be made up as directed in writing by the Conservation Officer or ordered by the Commission.

306. Gas-Oil Ratios

The Commission, upon hearing, may establish a maximum gas-oil ratio for a separate common source of supply, and may make such limiting, restricting, and regulating rules as it may deem proper.

307. Transfer of Allowables

The Commission, upon hearing, may in any common source of supply allow the transfer of allowables of high gas-oil ratio wells, after proper adjustment, partially or entirely to any other well or wells on the same lease having a lower gas-oil ratio.

308. Production from Different Sources of Supply from the Well Bore

The production of oil and gas, or either of them, from more than one common source of supply from one well without segregation of such production as to separate sources of supply is hereby prohibited, unless otherwise ordered by the Commission upon hearing.

309. Control of Multiple Completed Wells

Multiple completed wells which have been authorized by the Commission shall at all times be operated, produced, and maintained in a manner to insure the complete segre- [fol. 1169] gation of the various common sources of supply, unless otherwise ordered by the Commission upon hearing. The Commission may require such tests as it deems necessary to determine the effectiveness of the segregation of the different common sources of supply.

310. Use of Gas for Artificial Lifting

Gas may be used for the artificial lifting of oil where all such gas returned to the surface with the oil is lawfully used. Where the returned gas is not to be so utilized, the use of gas for artificial lifting of oil is prohibited, unless

otherwise specifically ordered by the Commission upon hearing.

311. Allowables for Wells Located Off the Field Spacing Pattern

The allowable for any well drilled upon a tract containing less than the unit acreage authorized by the Commission or at a location which does not conform to the pattern established by the orders of the Commission for the common source of supply shall be adjusted in the ratio that the attributable productive acreage in the unit, as shown by testimony in hearing before the Commission, bears to the established unit acreage.

Wells hereafter drilled off pattern without first obtaining an exception after notice and hearing by the Commission are hereby prohibited from producing either oil or gas until and only as ordered by the Commission upon hearing.

[fol. 1170] 312. Vacuum Not to Be Imposed Except Upon Application to Commission

The installation of vacuum pumps or other devices for the purposes of imposing a vacuum at the well head of any well or in any gas or oil bearing reservoir is prohibited; provided that, any operator desiring to apply vacuum may upon notice to adjacent lease operators apply to the Commission for permission. An accurate record of vacuum in the manner prescribed by the Commission shall be kept by the operator, which information shall be available to the Commission. Continued use of vacuum where heretofore authorized is permitted unless specifically ordered discontinued by the Commission upon hearing.

Gas Production Methods from Gas Pools

401. Allocation of Gas Production

(a) Twenty-five Per Cent of Potentials Where Special Pool Allocation Rules Are Not in Effect

The production of gas from any well shall be restricted to twenty five per cent (25%) of its potential capacity unless otherwise ordered by the Commission. No well shall be permitted to flow more than 25% of its capacity to produce as reflected by its last effective official potential.

The provisions of this rule, as set out above, shall not apply to any gas well with a potential of 1,500,000 cubic feet per day or less in pools not controlled by special pool allocation order. Production from such wells shall be restricted to a maximum of 375,000 cubic feet per day. This rule shall not apply to any pool where special allocation rules are in effect.

[fol. 1171] (b) Establishment of Special Pool Allocation Rules.

The Commission may, upon hearing, establish pool rules and regulations for the allocation of production of gas from any common source of supply. In determining the relative rate at which wells in the common source of supply shall be allowed to produce, the Commission may use such factors as may be found to be proper and equitable.

(c) Ratable Production Within Source of Supply.

Whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm, or corporation having the right to drill into and produce from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by such person, firm, or corporation bears to the total natural flow of such common source of supply, so as to prevent any such person, firm, or corporation from securing any unfair proportion of the gas therefrom; provided that, the Corporation Commission may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

402. Method of Taking Gas Well Potentials

(a) Time and Manner of Taking Potential Tests.

All operators shall make tests at least once every twelve (12) months on all gas wells for the purpose of determining their potentials, except that such tests shall be made at more frequent intervals by, or upon, direction of the Conservation officer.

[fol. 1172] All wells hereafter completed in any new pool or common source of supply shall be tested initially by the back-pressure method, using four (4) back-pressure flows

taken in sequence from low flow to high flow, from which four flows an absolute open flow for the well will be established.

In all existing pools not now subject to special pool regulations, all wells shall be tested by a one-point back-pressure test, assuming a flow characteristic of .85 to be used in establishing an absolute open flow.

Provided further, that at the request of the operator or operators, of a majority of the wells in any common source of supply not subject to special pool regulations, the Conservation Officer may direct that such wells be tested by any standard method recognized as being practicable, except that all wells in any one pool or common source of supply shall be tested by the same method. Any tests that are approved by the Conservation Department, or taken by the Conservation Department, shall be the official tests.

All official potential tests shall be made in accordance with detailed instructions obtainable from the Conservation Department.

(b) Wells Exempt from Potential Tests.

Wells having a potential of 1,500,000 cubic feet per day or less, in pools not controlled by special allocation orders, shall be exempt from the potential tests required in Section (a); provided, however, that shut-in pressures shall be required on all such wells.

[fol. 1173] (c) Report of Potential Tests.

Reports of potential tests as required by these rules shall be sworn to and forwarded to the Commission, on forms furnished by the Commission for that purpose, at the time they are taken. These reports shall be filed with the Commission immediately upon completion of the tests.

(d) Conditioning of Wells.

Nothing contained in these rules shall be construed as prohibiting the blowing of wells, when such blowing is necessary for efficient operation.

403. Method and Time of Pressure Test

Shut-in pressures shall be taken by the operator on all gas wells during the months of April and October of each year, unless the taking of such pressures is covered by special pool order.

Shut-in pressures shall be taken with a dead-weight guage after a minimum shut-in period of twenty-four (24) hours. When the shut-in period exceeds 24 hours, such shut-in period shall be reported to the Commission. All shut-in pressures shall be reported to the Commission on the regular monthly *monthly* gas well report furnished by the Commission.

404. Exemptions from Above Rules

These rules and regulations shall not apply to gas being removed from storage except and unless waste is involved.

[fol. 1174] 405. Waste of Gas at Gasoline Plants

The duty, obligation, and jurisdiction of the Commission to prevent waste of substantial quantities of tail gas where an additional market is available shall not be circumvented by any exclusive provisions in private contracts between the owners and the purchasers of tail gas.

Secondary Recovery and Pressure Maintenance

501. Permit for Injection of Gas, Air, or Water

(a) The injection of gas, or air, or water into any reservoir for the purpose of maintaining reservoir pressure or for secondary recovery operations is permitted only upon hearing and by order of the Commission; provided that where the injection fluid is gas only and the reservoir into which the injection is proposed is less than 2000 feet in depth and the average daily per well production of oil does not exceed 5 barrels therefrom, then such hearing and order of the Commission shall not be required.

(b) The application for all permits to inject gas, or air or water into any reservoir shall contain the following:

(1) Plat showing the location of the intake well, or wells and the location of all oil and gas wells, including abandoned and drilling wells and dry holes, and the names of operators within one-half mile of the intake well or wells;

(2) The formations from which wells are producing or have produced;

[fol. 1175] (3) The name, description, and depth of the formations to be affected by injection;

(4) The log of the intake well, or wells, or such information as is available;

(5) Description of the intake well's casing, or the proposed casing program, and proposed method for testing casing before use of the input wells;

(6) Statement as to whether gas, air, or water is to be used for injection, its source, and the estimated amounts to be injected daily;

(7) The names and addresses of the operator or operators of the project.

(c) Such applications shall be approved, or not objected to, by all operators who are to participate in a proposed cooperative plan or by the designated operator of a unitized project.

(d) In addition to the notice required by law, notice of such application shall be given by the applicant by mailing or delivering a copy of the application to each operator of drilling or producible wells or leases of record within one-half mile of the proposed intake wells. Such notice shall be mailed or delivered on or before the date the application is filed with the Commission. An affidavit shall be attached to the application, showing the parties on whom the notice has been served, and their addresses.

[fol. 1176] 502. Casing and Cementing of Injection Wells

Wells used for injection of gas, air, or water into the producing formation shall be cased with safe and adequate casing, or tubing, so as to prevent leakage, and shall be so set or cemented that damage will not be caused to oil, gas, or fresh water resources.

503. Notice of Commencement and Discontinuance of Injection Operations

The following provisions shall apply to all injection projects whether or not they are exempted from the application required to the Commission:

(a) Immediately upon the commencement of injection operations, the operator shall notify the Commission of the injection date.

(b) Within ten (10) days after the discontinuance of injection operations the operator shall notify the Commission of the date of such discontinuance and the reasons therefor.

(c) Before any intake well shall be plugged, notice shall be served on the Commission by the owner of said well, and the same procedure shall be followed in the plugging of such well as provided for the plugging of oil and gas wells.

504. Records

The operator of an injection project shall keep accurate records showing oil produced, injected volumes, and injection pressure.

[fol. 1177] Abandonment and Plugging of Wells

601. Scope.

All wells to be permanently abandoned shall be immediately plugged under the supervision of the Conservation Department in the manner hereinafter set out.

If no casing is to be pulled immediately, then a plug shall be placed at the top and bottom of the casing in such manner as to prevent the intrusion of any foreign matter into the well.

No substance of any nature or description other than that normally used in efficient well operations shall ever be placed in any well at any time before or during plugging operations.

602. Notice

Notice of intention to plug must be filed with the Commission by the owner or his agent at least five (5) days prior to the commencement of plugging operations, on a form prescribed by the Commission, which notice shall state the name and location of the well and name of the operator, and contain an affidavit that the owner or his agent has notified all offset lessees and property owners, giving the name of such lessees and owners and the location of their leases. In case of a newly completed dry hole in which no casing, except surface casing, has been run, the operator may commence plugging by giving reasonable notice, and securing the approval of the Conservation Officer, or his

agent, as to the time plugging operations are to begin. He shall, however, file the regular notification form.

[fol. 1178] 603. Supervision and Witnessing

Except as provided in Rule 602 above, the plugging of all wells shall be under the supervision of the Conservation Department, and plugging operations shall not be commenced until the Conservation Officer or his agent is present, or has had an opportunity to familiarize himself with the condition of the well and the method and materials to be used in plugging. The plugging operator shall notify the Conservation Officer, or his agent, of the exact time that plugging operations will begin. When operations are to be suspended for more than twenty-four hours, the Conservation Officer, or his agent, shall be again notified of the time that operations are to be resumed.

604. Method of Plugging

A dry or abandoned well must be plugged in such manner that oil, gas, water, or other substance shall be confined to the reservoir in which it originally occurred. The material used in plugging, whether mud-laden fluid, cement, or mechanical plug, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The following method shall be used unless a different method is authorized by the Conservation Officer, or by order of the Corporation Commission after hearing:

(a) The rules herein prescribed concerning the method of plugging wells shall not be considered rules of limitation, [fol. 1179] but the Commission through its Conservation Officer shall have the right to require any and all additional necessary precautions to protect the various strata penetrated in any well as circumstances may require.

(b) In plugging any well the open hole below the shoe of the casing shall be filled with cement or mudladen fluid of an approved quality to a point twenty-five (25) feet above the shoe of the casing. If it is impractical to fill the entire open hole, the approval of the Conservation Officer a plug at least twenty-five (25) feet in length may be set, which plug shall extend at least twenty-five (25) feet above the shoe of the casing.

(c) If the casing is to be removed from the hole, the hole shall be filled with cement or mudladen fluid to a point where it is proposed to sever the pipe. In event the severance of the pipe is unsuccessful, then the hole shall be kept filled with cement or mudladen fluid to the point where the actual severance occurs.

(d) As the pipe is pulled from the hole, the hole shall be kept full of mudladen fluid to the top of the casing at all times except where it is planned to remove an additional string or strings of pipe, in which event the mudladen fluid or cement shall be kept at least twenty-five (25) feet above the shoe of the succeeding string of casing. In the event chunk mud is used in filling the hole, such mud shall at all times be covered with a column of water, and the mud shall never be put into the hole in a manner that will allow it to bridge the hole. After the pipe has been pulled, the hole [fol. 1180] shall be kept open and mudladen fluid or chunk mud and water shall be put into the well as long as such mud will recede into the hole. No permanent cap shall be placed in the well until the Conservation Officer, or his agent, has had an opportunity to determine that the settling process is complete.

(e) In order to protect the fresh water strata, no surface casing shall be pulled from any well unless authorized by the Conservation Officer, or by special order of the Commission.

(f) A plug or seal shall be placed at the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation.

(g) When an operator desires to pull or "strip" the outer or protective casing in a well drilled by cable tools before final abandonment, said operator shall during such operation fill the annular space between such outer string of casing and the walls of the hole with mud similar in character and quality to that required to be used in the plugging of abandoned or dry holes. Before commencing any such operation, the Conservation Officer, or his agent, shall be notified as in the plugging of dry or abandoned wells.

605. Affidavit

Within fifteen (15) days after the plugging of a well has been completed, the owner or operator thereof shall file

with the Corporation Commission affidavit, setting forth in detail the method used in plugging, such affidavit to be on a form prescribed by the Commission. If there is not [fol. 1181] a complete log of the well on file with the Commission, then the owner at the time of plugging shall furnish and file a complete log thereof.

606. Plugging of Seismic, Core, and Other Exploratory Holes

Before any hole drilled for seismic, core, or other exploratory purposes which hole penetrates below the fresh water formation is abandoned, it shall be the duty of the owner or driller of same to plug same in such manner as to properly protect all water bearing formations; and within ninety (90) days after such plugging, an affidavit shall be filed with the Commission by the owner or driller, setting out the location of the holes drilled or plugged and the method used in protecting the water bearing formations in such plugging.

607. Wells to be Used for Fresh Water

When the well to be plugged may safely be used as a fresh water well and such utilization is desired by the landowner, the well need not be filled above a sealing plug set below the fresh water formation; provided that, written authority for such use shall be secured from the landowner and filed with the Commission.

608. License

No person, firm or corporation shall engage in the business of pulling casing and plugging oil or gas wells, or contracting to salvage casings therefrom, until a license has been secured from the Corporation Commission. To obtain [fol. 1182] a license an application shall be filed with the Commission stating the name and address of applicant, (if a firm or partnership, the names and addresses of the partners; and if a corporation, the names of the chief officers and directors); experience of applicant, and financial responsibility. Upon notice given as required by the procedural rules of the Commission and hearing, the Commission will issue a license if it deems applicant possesses sufficient technical and scientific information and is

financially responsible. Such license may at any time be canceled by the Commission upon a complaint filed (a) on motion of the Commission, (b) by the Conservation Officer, (c) by the Conservation Attorney, or (d) by any person interested in oil or gas production in this State. When such complaint is filed, the Commission shall serve upon the licensee notice of hearing and a copy of the complaint at least ten (10) days prior to the hearing, and if the evidence at said hearing justifies, the license may be cancelled.

609. Liability

The owner of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, shall be liable and responsible for the plugging thereof in accordance with the rules and regulations of the Commission; provided, in event such owner shall contract with a licensed contractor to salvage the casing and plug the well, then the liability therefor shall be primarily upon the plugging contractor as principal and the liability of the operator shall be secondary and as surety of the contractor.

[fol. 1183] Transportation, Purchasing, and Reporting

701. Reports on Oil

Purchasers or transporters of oil within the State of Oklahoma shall file with the Commission reports as follows:

(a) A monthly report covering takings from all leases in the State from which such purchaser buys and transports crude oil, said report to be made upon a form prescribed by the Commission; or at the option of the operator, for convenience a copy of the report made to the State Tax Commission under the gross production statutes may be filed in lieu thereof, such report to be filed on or before the end of the succeeding month.

(b) A report covering monthly takings by barrels from leases in the allocated pools in the State, said report to be on a form prescribed by the Commission, to be filed by the 15th day of the succeeding month.

(c) A report covering monthly runs by counties in barrels, said report to be on a form prescribed by the Commission, to be filed by the 15th day of the succeeding month.

702. Gas Purchase Reports to Conservation Department

The purchaser shall make gas volume reports to the Commission on forms prescribed by the Commission, setting out the volume of natural gas delivered directly into gas pipelines from each well or other connection. Where the producer gathers and meters gas, he shall make such reports to the Commission. That portion of gasoline plant gathering systems connected to oil wells shall not be considered gas pipelines under this rule.

[fol. 1184] 703. Common Purchaser and Carrier Rules

(a) Sections 3 and 4, Chapter 20, Session Laws of 1913, and Section 5, Chapter 197, Session Laws of 1915, are hereby adopted as common purchaser and common carrier rules as fully as if set out verbatim herein.

(b) No purchaser or transporter of oil or gas shall accept, transport, or purchase the same when produced in excess of the allowable fixed by the Commission, provided that, sellers or purchasers shall not be required to split a tank.

Rules of Practice and Procedure Before the Corporation Commission Relating to Conservation of Oil and Gas

General Information and Explanation

1. The offices and court room of the Corporation Commission are situated on the third floor of the Capitol Office Building, Oklahoma City, Oklahoma.

2. These rules shall be known and designated as the Rules of Practice and Procedure before the Corporation Commission in proceedings relating to the conservation of oil and gas, and the equitable and ratable taking thereof.

3. It is not intended that these Rules shall apply to any other proceedings before the Corporation Commission than those relating to the conservation of oil and gas, and the equitable and ratable taking thereof.

4. For convenience and clarity these Rules of Practice and Procedure are set forth under separate articles, to-wit: Article I to Article IX, inclusive.

[fol. 1185] 5. The rules set forth in Article I hereof shall be construed and held to be general rules applicable to all

proceedings relating to the conservation of oil and gas and the equitable and ratable taking thereof, except insofar as said general rules are superseded or modified by the special rules set forth in subsequent articles herein, applicable only to some particular phase of the law relating to the conservation of oil and gas and the equitable and ratable taking thereof.

6. The rules set forth in Article II hereof shall be construed and held to be applicable only to proceedings authorized and founded upon the statutes relating to authority of the Commission to promulgate rules and regulations governing conservation of oil and gas and the ratable taking thereof. The rules set forth in Article III shall be construed and held to be applicable to all proceedings as for contempt; and the rules set forth in Article IV shall be construed and held to be applicable in the promulgation of orders for the enforcement of laws, rules and regulations relating to the conservation of oil and gas and the equitable and ratable taking thereof. However, it shall always be understood that the rules set forth in Articles II, III, and IV, are supplementary to the rules in Article I. In case of conflict, then the special rules in Articles II, III and IV shall apply.

7. The rules set forth in subsequent articles relate to the subject stated at the head of each article, and the explanation above should apply to each case.

[fol. 1186] ARTICLE I

General Rules

1. When any proceeding is instituted under the statutes relating to the conservation of oil and gas, and the equitable and ratable taking thereof, the Secretary shall assign to said proceedings a number preceded by the letters "CD" and a title, and enter the proceedings and date of filing thereof in a separate docket, designated "Conservation Docket". Before the filing of subsequent pleadings or papers in such proceedings, the said number and title thereof shall be placed thereon. The Secretary shall also enter on said docket the date of the filing and character of all subsequent pleadings or papers filed in the case.

2. The Secretary shall be furnished with, and required to keep, a journal, in which he shall enter and record all rules

of procedure and all rules, regulations, and orders which shall be made in, or relate to, proceedings instituted before the Commission to conserve oil and gas, and enforce equitable and ratable taking thereof.

4. Parties to proceedings before the Commission shall be classed and designated as follows: Complainants, Applicants, Interveners, Defendants, and Respondents.

(a) A party who complains to the Commission of anything done, or omitted to be done, in violation of the law or rules and regulations of the Commission, shall be designated a "Complainant".

[fol. 1187] (b) In applications wherein authority of the Commission to perform an act, or in which relief from any rule or ruling of the Commission is sought, or wherein application is made to the Commission for the settlement of any dispute or controversy in any matter in which the Commission has jurisdiction, or wherein is sought the issuance and promulgation of orders, rules and regulations of the Commission, the person by whom or on whose behalf application is made shall be designated "Applicant". The original pleading filed by an applicant shall be designated "Application" or "Petition", which terms may be used interchangeably.

(c) Any person who is interested in any proceeding pending before the Commission to which he is not a party, or in which he has a right to complain, or to seek the action of the Commission upon any matter involved therein, may file a pleading in such proceeding prior to or at the time same is called for hearing, but not thereafter except for good cause shown. Any such petitioner shall be designated "Intervener".

(d) Any person complained of by anyone other than the Commission shall be designated "Defendant".

(e) In proceedings instituted by the Commission on its own motion, any person against whom such proceeding is directed shall be designated "Respondent".

4. All pleading filed with the Commission in any proceeding shall be printed or typewritten, on one side of the [fol. 1188] paper only, and as far as practicable shall be on paper 8½" by 14" in size. In addition to the original plead-

ings filed, there shall also be filed with the Secretary three (3) copies thereof, and as many additional copies as the Commission may order.

5. The Commission may, in its discretion, allow any pleading to be amended or corrected, or any omission to be supplied.

6. Any party to any proceeding, or anyone interested therein, shall be entitled to produce witnesses before the Commission to hear evidence in such proceedings, for the purpose of giving oral testimony therein; and such party or interested person shall also be entitled to have the deposition of witnesses residing within or without the State, to be used in any proceeding before the Commission. The Commission may likewise produce witnesses to give oral testimony, and may cause the deposition of witnesses residing within or without the State to be taken in any proceeding pending before it.

7. Subpenas may be issued in any proceeding before the Commission requiring the attendance of witnesses from any place in the State to any designated place of hearing before the Commission. Such subponas shall be issued by the Secretary of the Commission only upon a signed written request therefor, filed with said Secretary by (a) one or more members of the Commission; (b) by the Conservation Attorney; (c) Conservation Officer; (d) any complainant, applicant, or intervener; (e) any defendant or respondent; [fol. 1189] and (f) any party interested in said proceeding and entitled to be heard therein; provided that, before any subpena shall issue upon the request of any party specified in subdivision (f) hereof, said applicant shall have endorsed thereon the approval of one or more members of the Commission. Each such request shall contain the name of the witness or witnesses, and, where known, the address thereof, for whom such subpena is requested. Such subpena shall be issued in the name of the Corporation Commission, and shall be signed by the Secretary of the Commission. Upon like requests therefor, and in like manner, subpenas for the production of books, records, accounts, papers, and other documents shall be issued; provided that, such requests in writing shall state, as nearly as possible, the books, records, accounts, papers, or documents desired. When any witness subpenaed is present at a hearing he may

be called to testify by the Commission or by any person interested in such proceeding entitled to be heard thereon.

8. The depositions authorized by Rule 6 of this Article to be taken and used in any proceedings may be taken only when ordered by the Commission upon its own motion, or upon application to the Commission by any person named in said Rule 6, and shall be taken in the manner provided by law for the taking of depositions in civil actions in courts of record of this State.

9. When any such deposition is taken, it shall be sealed and endorsed with the title of the cause and the name of the officer making the same, and by him addressed and transmitted to the Secretary of the Commission, where it shall [fol. 1190] remain under seal until opened by the Secretary, on order of the Commission, or at the request of the parties to the proceeding, or attorney for such party.

10. Any party entitled to be heard in any proceeding before the Commission may appear and be heard by attorney, or in person if not represented by an attorney.

All persons appearing in any proceeding must conform to the standards of ethical conduct required by practitioners before the courts of this State. Failure to conform to such standards shall be grounds for refusing to permit such person to appear in any proceeding before the Commission.

Article II

Special Rules of Practice and Procedure in Promulgation of Rules and Regulations Governing the Conservation of Oil and Gas

1. The Commission, upon its own motion and the Attorney General, the Conservation Attorney, or the Conservation Officer on behalf of the State, and any operator, producer, taker, or other person interested in any common source of supply of oil and gas, may institute proceedings; and the Commission shall have jurisdiction to make any and all orders, rules and regulations authorized by the laws of this State.

2. Any proceeding instituted upon motion of the Commission the application shall be signed by at least two members of the Commission; and any other application

[fol. 1191] shall be signed by the person filing same or by his attorney. An application shall state (a) the name or general description of the common source or sources of supply affected by the order, rule or regulation sought, unless same is intended to apply to and effect the entire State, in which event the application shall so state, and such statement shall constitute sufficient description; and (b) briefly the general nature of the order, rule or regulation sought in the proceedings.

3. When an application is filed, the same shall be set for hearing before the Commission at such time as will permit ten (10) days' notice thereof to be given, as hereinafter provided.

4. Upon the institution of a proceedings by application, the Commission shall give at least ten (10) days' notice of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation printed at Oklahoma City, Oklahoma; unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. Said notice shall be signed by at least a majority of the Commission, and shall confer to the other requirements provided by law. In addition to said notice by publication the Conservation Department shall mail a copy of the application with advice of the date and hour of hearing, or a copy of the notice of hearing, at least eight (8) days prior to such hearing, to each and every producing operator in the State who has previously made written request that all applications filed with the Commission be furnished such operator.

[fol. 1192] 5. Any respondent, or any person entitled to be heard in any such proceeding, shall at any time on or before the date fixed for the hearing be permitted to file a response or answer thereto; but the failure to file any such response or answer shall not render unnecessary the hearing of evidence to support said application, or affect anyone's right to offer and introduce evidence in opposition thereto. Filing of such response or answer shall not, except in the discretion of the Commission, constitute a ground for continuence of the hearing beyond the date

fixed in the notice for such hearing, except as hereinafter provided.

5. Any person entitled to be heard in such aforesaid proceeding may on or before the date set for hearing in the notice thereof appear especially for the purpose of attacking the sufficiency or validity of the notice, but such objection if overruled shall be without prejudice to a hearing or trial on the merits of the case at the time specified in such notice.

7. The Commission may at the time or times, and in the manner provided by law, continue any such aforesaid proceeding upon the docket of the Commission for further hearing or hearings thereon, and for the issuance of further orders, rules, or regulations by the Commission therein, modifying, supplementing, repealing, or vacating any previous order, rule, or regulation of the Commission therein, as it shall determine.

[fol. 1193] 8. Any person who objects to the granting of any application or desires strict proof thereon, should file such objection or demand for proof at least five (5) days before the hearing, or it will be assumed that there is no objection thereto. If said objection or demand for proof is filed with, or presented to, the Commission at any time within five (5) days, then the cause shall be continued for at least five (5) additional days, but only one such continuance shall be granted except at the discretion of the Commission.

Article III

Special Rules of Practice and Procedure to Be Followed in Proceedings as for Contempt

1. Proceedings as for contempt, for disobedience or violation of the law or of the orders, rules, regulations, and judgments of the Commission made, issued, or rendered under the provisions of law, may be commenced by filing a complaint with the Commission by (a) the Attorney General, (b) Conservation Attorney, (c) Conservation Officer, or (d) any other person interested in any common source of supply of oil or gas in the State.

2. No verification of the complaint shall be necessary unless it is filed by a producer or taker of oil or gas, in which event the complaint shall be verified, but such verification may be upon information and belief.

3. The complaint shall state (a) the names of the person, firm, trust, corporation, or association against whom [fol. 1194] the complaint is made; (b) the order or orders, rule or rules, regulation or regulations, and judgment or judgments of the Commission, violation of which is charged; and (c) briefly, in general terms, the acts or omissions of the defendant constituting the violation of which complaint is made.

4. The complaint may charge against any defendant one or more violations of the provisions of the law relating to the Conservation of oil and gas and/or of any order, rule, or regulation of the Commission made thereunder; provided that, the acts or omissions of the defendant constituting each violation charged, shall be briefly stated in general terms in separately numbered paragraphs or counts of such complaint.

5. Upon the filing of a complaint, the Secretary of the Commission shall issue in the name of the State, by him as such Secretary, a citation to the defendant or defendants, to which shall be attached a copy of said complaint.

6. The citation shall state (a) the date on which and by whom said complaint was filed, and the name of the complainant; (b) a brief general description of the nature of the complaint; (c) a reference to copy of the complaint, which shall be attached to said citation; (d) the date on which said complaint is set for hearing, which shall not be earlier than ten (10) days from the date of such citation; and (e) a statement that unless the defendant shall, on or before said date for hearing, file his or its pleadings to such complaint, allegations, and charges therein contained, [fol. 1195] the same shall be taken as confessed.

7. The service of the citation for contempt may be made by the Conservation Officer or any deputy conservation officer or by any person authorized and directed by order of the Commission to make such service; and such service may be made upon any person, firm, trust, association, or corporation, required to be served, in the same manner

as is provided for service of summons in civil actions in the district courts of the State.

8. After the service of citation has been made, as hereinbefore authorized, the officer or other person making the service shall make his return thereof, and file the same with the Secretary of the Commission. Said return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be signed by the officer or person making the service.

9. If any defendant fails to file his or its pleadings to the complaint on or before the date set for hearing, or if any defendant, who has filed his or its pleadings before the date set for hearing, fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear evidence on the merits of the complaint. If it is determined by the Commission, after hearing the evidence, that the defendant is guilty, as charged in the complaint, it shall impose such fine upon the defendant as in its opinion the facts and circumstances warrant, and enter its judgment accordingly, and if the [fol. 1196] Commission should determine from the evidence that the defendant is not guilty, it shall enter its judgment accordingly.

10. If any defendant cited to appear, as aforesaid, desires a hearing upon the complaint, such defendant shall, on or before the time specified in the citation for the hearing, file his or its answer to the merits of the case, and shall also be present or represented before the Commission at the time set for hearing. The filing of an answer to the merits of the case shall not be deemed an admission of the sufficiency of the complaint, or construed as a waiver of any defect therein; and any defendant may also at the time of filing his or its answer to the merits file a motion to dismiss the complaint, for reason of insufficiency thereof, or lack of jurisdiction, or may file any other pleading necessary to raise any objection that the defendant may have to the complaint. The said various objections, including the motion to dismiss, may be, in the discretion of the defendant, incorporated in and made a part of the answer, with the same force and effect as if raised or presented in separate pleadings; and any defendant after filing his or

its answer may, with leave of the Commission, and before a hearing is had on the merits of the case, and without prejudice to a hearing thereon, at the time specified in the citation, file any other pleading he or it may desire.

The raising of objection to the complaint by any of the methods herein provided shall not, if overruled, prejudice a final hearing on the merits and disposition of the case on [fol. 1197] the date specified in the citation. All objections to the complaint, regardless of how they are brought to the attention of the Commission, shall be presented to the Commission and disposed of by it before the trial is begun on the merits of the case.

If, upon hearing the motion to dismiss, or any other objection to the complaint, the Commission is of the opinion that the complaint is defective or insufficient, the Commission shall sustain said objection or motion, and, in its discretion, dismiss the complaint, or permit the complaint to be amended within such time as may be fixed by the Commission. In the event that the Commission permits the filing of an amended complaint, it shall not only fix the time in which such amended complaint shall be filed, but it shall also specify the time, which shall not be less than ten (10) days from the date of filing thereof, in which the defendant or defendants shall answer such complaint.

11. Every case instituted under this Article shall be tried on its merits on the date specified in the citation, or at such other time to which such case shall be continued for hearing by the Commission.

Article IV

Special Rules of Practice and Procedure to Be Followed in Making Orders for Enforcement of Laws Relating to Equitable and Ratable Taking of Oil and Gas, and of Orders of the Commission

1. The Commission may upon its own motion institute proceedings to prevent violations of law and the orders, [fol. 1198] rules, *and regul-* and regulations of the Commission relating to the equitable and ratable taking of oil and gas from any common source of supply; or enforcement orders may be issued by the Commission upon written application filed by the Attorney General, the Conservation Attorney, or the Conservation Officer, in the

name of the State; or by any person interested in equitable and ratable taking of oil or gas from any common source of supply, where any such violation of law or of the regulations of the Commission has occurred.

2. In a proceeding for an order of enforcement the application shall state (a) the name of the violator or violators, (b) the provisions of the statute or the order, rule, or regulation which it is charged are being violated; and (c) briefly, in general language, the act or acts, omission or omissions, done or being done by the alleged violator or violators which constitute the violation complained of.

3. Such application, except when filed on motion of the Commission, shall be verified by the officer or person filing the same, but such verification may be made upon affiant's best information and belief. If instituted on motion of the Commission, the application shall be signed by at least two members of the Commission.

4. Whenever an application for an order of enforcement shall charge that the violation of the provisions of law relating to the equitable and ratable taking of oil or gas [fol. 1199] from any common source of supply, or of the orders, rules, and regulations of the Commission, complained of in relation thereto, is to the effect that the defendant has produced or is producing oil or gas from any well or wells in any common source of supply at a rate in excess of that allowed by law and the orders, rules and regulations of the Commission applicable thereto, the Commission may, in its discretion, at the time of the filing of such application, or at any time thereafter prior to its final hearing and determination, issue a temporary order or orders, directing the defendant or defendants in such proceeding to shut down and immediately discontinue or curtail the production of oil or gas from any well or wells alleged to be involved in the violations complained of, so as to comply with the provisions of law and the orders, rules, and regulations of the Commission; and said temporary order may further provide that in the event the defendant or defendants fail to shut down or curtail the production from any such well or wells in the manner required by the order of the Commission within twenty-four (24) hours from the time of the service of such order the Conservation Officer, or his deputies, shall immediately go

upon the premises where such well or wells are situated and completely close the same to the production of oil or gas, as the case may be, until the hearing provided for in said temporary order shall have been conducted, or until otherwise ordered by the Commission.

5. If a temporary order is made by the Commission, as provided for herein, the defendant or defendants against [fol. 1200] whom any such temporary order has been issued shall have the right to appear before the Commission at any time prior to the date for hearing, and move that such temporary order be dissolved or modified, and show cause to the Commission why same should be done.

6. When a motion to dissolve or modify a temporary order has been filed, the Commission shall grant a prompt hearing thereon, and such hearing may be had with or without notice thereof to the petitioner; and the Commission may in its discretion dissolve or modify such temporary order of continue the same until final hearing in said cause.

7. Upon the filing of any application for an order of enforcement the Secretary of the Commission, in the name of the Commission and by him as its Secretary, shall issue a notice thereof to the defendant or defendants named in such application.

8. The notice required in the preceding rule shall name the Commission, the style and number of the cause, and shall run in the name of the State of Oklahoma, and shall be addressed to the defendant or defendants, and shall state (a) the filing of such application; (b) the order or orders, rule or rules, regulation or regulations of the Commission, or the provisions of the law, violation of which is charged therein; (c) the common source of supply with respect to which such violations have occurred or are occurring; (d) the date set for hearing, which shall be on such date as provided by order, rule, or regulation of the Commission, but shall not be earlier than ten (10) days from the date of the issuance of the notice; and (e) a copy [fol. 1201] of said application shall be attached to said notice; and if any temporary order of enforcement shall have been made by the Commission in said proceedings, reference to such order shall be contained in said notice,

and a copy thereof shall be attached to said notice, in order that service of the same upon the defendant or defendants may be made at the same time as the service of said notice.

[fol. 1201] 9. The notice herein required may be served upon the defendant or defendants in the manner provided in Rule 7 of Article III hereof.

10. After the service of the notice has been made, a return thereof shall be made as specified in Rule 8 of Article III hereof.

11. If any defendant fails to appear at the time set for hearing, as specified in the notice, the Commission may immediately proceed to hear evidence on the merits of the application. If it is determined by the Commission, after hearing the evidence, that the law, order, rule, or regulation has been violated by the defendant or defendants as charged in the application, the Commission shall enter such order as in its opinion is proper in the premises under the facts and law applicable thereto. If the Commission at such hearing should determine from the evidence that any defendant has not violated the law or order, rule, or regulation of the Commission, as charged in the application, it shall accordingly enter its order in favor of the defendant.

[fol. 1202] 12. If any defendant notified to appear, as hereinbefore provided desires a hearing upon the application, he shall be present or represented before the Commission at the time set for hearing. The defendant appearing or represented before the Commission shall not be required to file any written answer or pleading to the charges made in the application, but if so desired, he shall be granted a hearing without any formal answer or pleading. However, any defendant notified to appear as aforesaid may at any time prior to the time of the hearing, if he so desires, file a written answer to the charges contained in the application, and such written answer shall not be deemed an admission of the sufficiency of the charges filed against him, nor shall it be construed as a waiver of any defect in the application; and to the end that all objections to the application shall be properly called to the attention of the Commission and disposed of by it, any defendant may also, at the time of filing his or its written answer, file a

motion to dismiss the application for reason of insufficiency thereof, or lack of jurisdiction, or may file any other pleading necessary to raise any objection that such defendant may have. The various objections, including the motion to dismiss, may in the discretion of the Commission be incorporated in and made a part of his or its written answer, if such answer is filed, with the same force and effect as if raised or presented in separate pleadings; and any defendant may, after filing an answer, with leave of the [fol. 1203] Commission, and before a hearing is had on the merits of the case, and without prejudice to a hearing thereon, at the time specified in the notice, file any other pleading he or it may desire.

The raising of objection to the application by any of the methods herein provided shall not, if overruled, prejudice a final hearing and disposition of the case on its merits at the time specified in the notice. All objections to the application, regardless of how they are brought to the attention of the Commission, shall be presented to the Commission and disposed of by it before the trial is begun on the merits of the case. If, upon hearing the motion to dismiss, or any other objection, the Commission is of the opinion that the application is defective or insufficient, the Commission shall sustain said motion or objection, and, in its discretion, dismiss the application, or permit same to be amended within such time as may be fixed by the Commission. In the event that the Commission permits the filing of an amended application, it shall not only fix the time in which such amended application shall be filed, but it shall also specify the time, which shall not be less than ten (10) days from the date of filing thereof, at which the defendant or defendants shall appear for hearing.

13. Every case instituted under this Article shall be tried on its merits on the date specified in the notice, or at such other time to which such cause shall be continued for hearing by the Commission.

[fol. 1204] 14. Upon the conclusion of the evidence and arguments of counsel, if any, the Commission shall render judgment, a copy of which judgment, prepared by proper order, shall be delivered to the defendant, and the defendant shall have the statutory time from the receipt of the copy of such judgment to file exceptions thereto and/or

motion for new trial, and shall be allowed to appeal from the judgment of the Commission to the Supreme Court, as provided in other cases, upon his or its filing a bond with the Commission in double the amount of such fine or judgment, with such security as may be required by the Commission.

15. Upon the filing of such bond and allowing the appeal, same shall operate as suspension of the fine and judgment appealed from.

Article V

New Trials in Judicial and Quasi-judicial Proceedings

1. The Commission in its discretion may allow an application for a new trial.

2. Application or motion for new trial must be filed as provided by the laws of the State of Oklahoma. Such application or motion must be upon written grounds and stated briefly.

3. Upon the filing of an application or motion for new trial, the Commission shall hear same in open hearing at any time it is in session, without the giving of any notice. At such hearing the Commission may grant or deny the application or motion.

[fol. 1205] 4. In the event the Commission grants such application or motion for new trial, same shall be set for hearing before the Commission at such time as will permit ten (10) days' notice thereof to be given, as herein provided.

Article VI

Legislative and Administrative Proceedings

1. Any person affected by any legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same; and such application shall be in writing, and shall be heard as expeditiously as possible after notice of the hearing thereof has been given in the manner provided in Article IV hereof.

Article VII

Appeals

1. As now provided by law, appeals to the Supreme Court of the State must be taken within sixty (60) days from the date on which the order, rule, regulation, judgment, decree, or final action of the Commission appealed from, shall have been made, rendered, or taken by the Commission.

2. In matters of appeal from an order of the Corporation Commission, the Chairman of the Commission, under the seal of the Commission, shall certify to the Supreme Court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence [fol. 1206] introduced before, or considered by, the Commission, as may be selected, specified, and required to be certified by any party in interest as well as such other evidence so introduced or considered as the Commission may deem proper to certify. The Commission shall, whenever an appeal is taken, file with the record of the case, as a part thereof a written statement of the reasons upon which the action appealed from was based.

6. No order, rule, regulation, judgment, decree, or final action of the Commission appealed from shall be superseded, except by order of the Commission or the Supreme Court. No supersedeas shall be granted by the Commission except upon condition that appellant shall file in said appeal a bond, with such surety as shall be approved by the Commission, and said bond shall (a) be in such amount, (b) contain such terms and conditions, and (c) be payable to the State, for its benefit, or for the benefit of such person or persons as shall be damaged by such appeal, if the order, rule, regulation, judgment, decree, or action of the Commission appealed from shall be affirmed.

Article VIII

Definition of Order and Journal Entry

1. The term "order", as used by the Commission, shall mean that which is required or ordered to be done, or not to be done, and shall be generally reserved for the re-

quirement or order part of formal reports in decisions of cases, or in the promulgation of rules, regulations, and [fol. 1207] requirements in matters over which the Commission legislates or adjudicates.

2. The term "journal entry" shall be used in all other matters wherein the Commission desires to make and keep a permanent record without the formality of an order.

Article IX

Saving Clause and Provision for Amendments and adoption of Other Rules

1. The adoption of the above and foregoing rules shall not in any wise affect the validity of any proceeding previously instituted and now pending before the Commission, or any rule, regulation, or order made therein; but after the adoption of these rules all further proceedings and hearings in any proceeding heretofore brought and now pending before the Commission, and the institution, prosecution, and hearing of any proceeding hereafter brought before the Commission in connection with any existing orders, rules, or regulations of the Commission shall be governed by the rules of procedure herein.

2. All rules of procedure heretofore adopted by the Commission and now in force, applicable to the proceedings specified in the above and foregoing rules to the extent, but only to the extent, that the same are in conflict with the rules set forth in Articles I to IX, inclusive, hereof, are hereby repealed and set aside.

[fol. 1208] 3. In proceedings and hearings before the Commission relating to the conservation of oil and gas, and the equitable and ratable taking thereof, the Commission shall be governed by the Code of Civil Procedure of the State of Oklahoma in all matters not covered by law relating to the conservation of oil and gas or by the Rules of Practice and Procedure herein prescribed.

It is further ordered that Order No. 1299, which is the general rules and regulations adopted by the Commission in 1917, and Order No. 6394 as amended by Order No. 8229, the general rules and regulations adopted pursuant to the 1933 conservation law, and Order No. 9068, rules

of practice and procedure, be, and same are hereby, repealed.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 24th day of January, 1945.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[fol. 1209] EXHIBIT 71

Skelly Oil Company

Tulsa, Oklahoma

September 1, 1945.

Re: Gas Purchase Contract — Guymon-Hugoton Field — And Letter Agreement.

General Attorney: W. P. Z. German.

Attorneys: Alvin F. Nolony, Hawley C. Kerr *, James Marberry, Carl C. Lovell *, A. G. Cochran, Leo J. McLaughlin, Robert Lain, Tulsa, Okla.; Cliff V. Peery, Kansas City, Mo.

Cities Service Gas Company, First National Building, Oklahoma City 1, Oklahoma

Attention: Mr. Baird

GENTLEMEN:

Thanks for your letter of yesterday, with which you transmitted the duplicate original of the Gas Purchase Contract dated August 28, 1945, after it and the original had been duly executed by the officers of your company, and the original and one executed copy of the Letter Agreement dated August 28, 1945, duly executed on behalf of your company.

The Letter Agreement has been executed on behalf of Skelly Oil Company under date of August 31, 1945, and

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* In the Armed Forces.

the duplicate thereof, so executed, is returned to you herewith.

It has been a pleasure to work with you, Mr. Clark and others with your company in negotiating and finalizing the Contract and Letter Agreement.

Yours very truly, W. P. Z. German.

WPZC:LB.
CC-Messrs. Herndon, Vaiden, Rae.
Building.

[fol. 1210] Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

August 28, 1945.

Skelly Oil Company, Skelly Building, Tulsa, Oklahoma.

Letter Agreement

Re: Gas Purchase Contract, Guymon-Hugoton Field

GENTLEMEN:

The purpose of this letter is to create an agreement between you and our company which will supplement and in certain respects modify the Gas Purchase Contract (hereinafter called "main contract") about to be executed by you and us covering certain acreage which you are dedicating to us in the Guymon-Hugoton Field in Texas County, Oklahoma. When said main contract is executed by both parties thereto, then this supplemental agreement shall then and thereupon become effective.

(1) You have indicated that in view of the expenditures required to construct your gathering system you would prefer to have a drilling program that is more definite than that contained in paragraphs 16 and 17 of said main contract. We have no objection to this and therefore said paragraphs 16 and 17 and the first sentence of paragraph 18 are hereby amended and in lieu thereof it is hereby agreed that you, as Seller, will, in good faith endeavor to complete by the end of the year 1945 enough additional wells on the dedicated acreage to make a total, when considered with the wells you have already drilled thereon, of thirty-two (32)

completed wells, and any thereof that you cannot complete by the end of 1945 you will complete as soon as you can thereafter, and, as soon as your gathering system is completed and connected at the delivery point specified in said main contract, into our gathering system and is ready for operation you also agree to connect all said wells thereto that are then completed, and the others as and when they are completed; and thereafter you agree to drill and connect not more than ten (10) additional wells per year until the remainder of the dedicated section units are developed; these provisions being subject, however, to the provisions of the second sentence of paragraph 18 of said main contract.

(2) You also agree to make diligent effort to exchange all you can of the approximately 19,000 acres held by you in Texas County, Oklahoma, that are not described in said main contract but which are described in "Exhibit A" attached hereto, for acreage adjacent to that dedicated under said main contract, and to dedicate to us the acreage received by you in such exchange, and by appropriate separate written agreement to be entered into be- [fol. 1211] tween you and us to include same as additional acreage dedicated to us and brought within said main contract, as modified by the provisions of paragraph (1) of this letter agreement, or, if it seems to us desirable, you and we shall enter into a separate contract covering the sale and purchase of the gas from such acreage so taken in exchange, which separate contract shall embrace substantially the same terms and conditions as contained in said main contract, but to be attended by a letter agreement modifying paragraphs 16, 17 and the first sentence of paragraph 18 like paragraph (1) of this letter except it shall be limited (unless you and we then otherwise agree) to the drilling of ten (10) wells per year.

(3) If, however, you are unable to make such exchange as respects said acreage or any part thereof described in "Exhibit A", you hereby grant to us the first option to purchase the gas that may be produced therefrom. Should you extend your gathering system thereto (and whether you do so shall be solely at your option), said acreage shall thereupon become dedicated to us, and you agree to enter into a separate contract with use covering the sale and purchase of gas therefrom on substantially the same terms and

conditions as are contained in said main contract, but to be attended by a letter agreement modifying paragraphs 16, 17 and the first sentence of paragraph 18 like paragraph (1) of this letter except it shall be limited (unless you and we then otherwise agree) to the drilling of ten (10) wells per year. Should we extend our gathering lines thereto, or arrange an exchange of gas therefrom with other purchasers having gathering lines in the vicinity, you agree that such of said acreage as is to be developed and served thereby shall thereupon be dedicated to us and the gas therefrom contracted to us to be delivered at the wellheads, at the same price per thousand cubic feet, exclusive of the one-half cent (½¢) gathering and delivery charge therein provided for, which said main contract provides, in paragraph 11 thereof, shall be paid for the gas covered by it and on the same terms and conditions, insofar as applicable, that are set forth in said main contract. In the meantime should some or any thereof become subject to drainage by the drilling and production by other operators, or if, in the case of any lease thereon, only one year or less of its primary term remains, or if any such lease becomes in danger of cancellation for breach of its covenants, before the taking of gas therefrom has been arranged by us, as aforesaid, then you shall notify us in writing of such condition and if within thirty (30) days therefrom we do not complete arrangements to purchase gas therefrom, our option to purchase gas from such portions thereof as are so affected shall terminate and you may proceed to sell gas therefrom to others.

(4) None of the foregoing provisions relating to said acreage described in "Exhibit A", attached hereto, is intended to impose upon you the duty or obligation to renew or extend the leases, or any thereof, on said acreage beyond their respective present fixed terms unless you, in your sole judgment, shall deem it desirable to do so, and as to any such lease which expires or which is so near its expiration date that it will be impracticable or impossible to develop same in order to extend its term, and you do not elect to [fol. 1212] obtain an extension by agreement with the lessor (his or her heirs, successors or assigns) shall, upon its expiration (whether it be before or after any such renewal or extension), be excluded from the foregoing provisions.

(5) It is further agreed that, at any time we may request, and within thirty (30) days after such request, you and we shall enter into a new contract as a substitute for said main contract for the sale by you to us and the purchase by us from you of the gas thereafter to be produced from the premises dedicated to us by said main contract, the said new contract to be dated as of the date of its execution and to contain terms and provisions identical with those contained in said main contract, except for appropriate changes therein due to the previous performance by the respective parties of covenants and conditions thereof, but the provisions of paragraph (1) of this letter agreement shall (unless the dedicated acreage has then been fully developed) nevertheless remain in full force and effect.

(6) It is agreed and understood that the benefits to the respective parties from said main contract, when executed, shall in addition to the mutual promises appearing herein, be sufficient consideration to support this letter agreement.

(7) When your company has signed the original and the enclosed duplicate hereof in the appropriate place indicated below, this letter will become a supplemental contract between us, subject, of course, to the execution and delivery of said main contract, and you shall thereupon return to us the duplicate hereof.

Yours very truly, Cities Service Gas Company. By George H. Baird, Vice President.

Attest: —— ——, Asst. Secretary.

Accepted this August 31, 1945.

Skelly Oil Company. By —— ——, Vice President.

Attest: —— ——, Asst. Secretary.

[fol. 1213]

Exhibit A to Letter Agreement

Texas County, Oklahoma

Lease No.	Description	Acres	Lse. Ownership
9010	W2 & SE4 Sec. 13 & N2 Sec. 14 & NE4 Sec. 23-1N-12E	960	All Skelly
25347	NE4 Sec. 14-3N-18E	160	Do
25348	SW4 Sec. 2-3N-18E	160	Do
25351	NE4 Sec. 32-1N-11E	160	Do
25350	NW4 Sec. 33-1N-11E	160	Do
25354	NE4 Sec. 22-1N-11E	160	Do
25349	SE4 Sec. 22-1N-11E	160	Do
25352	NE4 Sec. 23-1N-11E	160	Do
25353	E2 SE4 & SE4 NE4 Sec. 14-1N-11E	120	Do
25402	NE4 Sec. 20-3N-18E	160	Do
25403	NE4 Sec. 22-3N-18E	160	Do
25434	SE4 Sec. 22-3N-18E	160	Do
25404	NW4 Sec. 14-3N-18E	160	Do
25405	NE4 Sec. 14-3N-18E	160	Do
25473	SE4 Sec. 1-3N-18E	160	Do
25472	W2 Sec. 18 & NW4 Sec. 19-4N-19E	480	Do
25443	NE4 Sec. 18-4N-19E	160	Do
25433	SE4 Sec. 6-4N-19E	160	Do
25435	NW4 Sec. 5-4N-19E	160	Do
25401	SE4 Sec. 29-6N-19E	160	Do
25439	NW4 Sec. 28-1N-11E	160	Do
25442	SW4 Sec. 28-1N-11E	160	Do
25438	N2 Sec. 27-1N-11E	320	Do
25471	NW4 Sec. 23-1N-11E	160	Do
25436	S2 SW4 & W2 SE4 Sec. 14-1N-11E	160	Do

[fol. 1214]

25437	SE4 Sec. 2 & N2 NE4 & SE4 NE4 & NE4 SE4 Sec. 11-1N-11E	320	Do
25578	NW4 Sec. 22-3N-18E	160	Do
25507	W2 Sec. 23-3N-18E	320	Do
25554	SW4 Sec. 14-3N-18E	160	Do
25505	SW4 Sec. 15-3N-18E	160	Do
25551	NW4 Sec. 11-3N-18E	160	Do
25529	NE4 Sec. 2-3N-18E	160	Do
25528	N2 SW4 Sec. 1-3N-18E	80	Do
25509	NE4 Sec. 1-3N-18E	160	Do
25585	SW4 Sec. 30-4N-19E	160	Do
25561	NE4 Sec. 6-4N-19E	160	Do
25562	SE4 Sec. 5-4N-19E	160	Do
25594	NE4 Sec. 19-4N-19E	160	Do
25555	S2 Sec. 31-5N-19E	320	Do
25583	SE4 & E. 20 rods of SW4 Sec. 32-5N-19E	180	Do
25526	NW4 Sec. 30-5N-19E	160	Do
25586	NW4 Sec. 29-5N-19E	160	Do
25584	102.4 ac. out of SE4 Sec. 29-5N-19E	102.4	Do
25597	NE4 Sec. 19-5N-19E	160	Do
25596	SE4 Sec. 19-5N-19E	160	Do
25527	SW4 Sec. 5 & NE4 Sec. 7-5N-19E	320	Do
25595	NE4 Sec. 8-5N-19E	160	Do
25525	SE4 Sec. 8-5N-19E	160	Do
25503	NE4 Sec. 31-6N-19E	160	Do
25501	NW4 Sec. 29-6N-19E	160	Do
25502	NE4 Sec. 29-6N-19E	160	Do

[fol. 1215]

Exhibit A to Letter Agreement

Texas County, Oklahoma

Lease No.	Description	Acres	Lse. Ownership All Skelly
25577	NE4 Sec. 21-6N-19E	160	Do
25508	SW4 Sec. 21-6N-19E	160	Do
25504	S2 SE4 Sec. 21-6-N-19E	80	Do
25598	SE4 Sec. 31-1N-10E	160	Do
25588	N2 & SW4 Sec. 30-1N-11E	480	Do
25510	NW4 SW4 Sec. 14 & NE4 SE4 Sec. 15 & W2 NW4 Sec. 14-1N-11E	160	Do
25619	SE4 Sec. 14-3N-18E	160	Do
25621	Tract 1: All that part of NE4 of Sec. 8 lying N. & W. of C.R.I. & P. Ry. Co. Railroad, containing 3-34 ac.; Tract 2: all of NW4 Sec. 8, except that portion lying E. and S. of C.R.I. & P. Ry. Co. RR, containing 10.83 ac.; Tract 3: all of SW4 Sec. 8, except that part desc. as a quadrangular tract E. of C.R.I. & P. Ry. Co. RR, cont. 68-92 ac., said land containing 243.59 ac. altogether, in Twp. 4N, Rge. 19E		
25620	NE4 Sec. 30-5N-19E	160	Do
25654	NE4 Sec. 20-6N-19E	160	Do
25765	S2 Sec. 11-3N-18E	320	Do
25774	NE4 Sec. 8, except that part lying N. & W. of the C.R.I. & P. Ry. Co. RR, containing 3.34 ac.; all that part of NW4 Sec. 8 lying E. & S. of the C.R.I. & P. Ry. Co. RR, containing 10.83 ac., all in 4N-19E	167.49	Do
25772	SE4 Sec. 8; all that part of SW4 of Sec. 8 lying E. of C.R.I. & P. Ry. Co. RR, containing 68.92 acres, all in 4N-19E	228.92	Do
25768	NW4 Sec. 32-5N-19E	160	Do
25771	SW4 Sec. 32, except E. 20 rods, in 5N-19E	140	Do

[fol. 1216]

25770	SE4 Sec. 6-5N-19E	160	Do
25767	SE4 Sec. 32-6N-19E; & E2 Sec. 5-5N-19E	480	Do
25769	NW4 Sec. 28-6N-19E	160	Do
25773	NW4 Sec. 21-6N-19E	160	Do
25792	SE4 Sec. 36-1N-11E	160	Do
25885	N2 & N2 S2 Sec. 2-1N-17E	480	Do
25805	S2 S2 Sec. 18-2N-18E	160	Do
25856	S2 SW4 Sec. 1-3N-18E	80	Do
25807	E2 Sec. 30-4N-19E	320	Do
25806	SE4 Sec. 30-5N-19E	160	Do
25814	NE4 Sec. 29-5N-19E	160	Do
25854	All of Sec. 36-1N-10E	640	Do
25855	NW4 & NW4 SW4 Sec. 31-1N-11E	200	Do
25911	SW4 Sec. 29-5N-19E	160	Do
26013	NW4 Sec. 31-5N-19E	160	Do
26116	SE4 Sec. 20-5N-19E	160	Do
26126	All of Sec. 26; SE4 Sec. 27 & E2 NE4 Sec. 34-1N-11E	880	Do
26394	N2 Sec. 26-1N-10E	320	Do
26642	S2 Sec. 25-1N-10E	320	Do
28138	SE4 Sec. 14-1N-12E	160	Do
28139	SE4 Sec. 14-1N-12E	160	Do
28290	NE4 Sec. 13-1N-12E	160	Do
		18,982.04	

[fol. 1217] GAS PURCHASE CONTRACT

This Agreement, made and entered into this 28th day of August, 1945, at Oklahoma City, Oklahoma, by and between Skelly Oil Company, a Delaware corporation, with its general business office at Tulsa, Oklahoma, hereinafter referred to as "Seller", and Cities Service Gas Company, a Delaware corporation, with general business offices at Oklahoma City, Oklahoma, hereinafter referred to as "Buyer":

Witnesseth:

Whereas, Seller owns and operates many oil and gas leases in the Mid-Continent area and owns oil and gas leases in what is commonly known as the Hugoton Field in Oklahoma, Kansas and Texas covering approximately 106,000 acres of land in said field. That said Hugoton Field is comprised of about two million five hundred thousand (2,500,000) acres of land that is considered proven as productive of gas; Seller already has a number of productive gas wells in said field and intends hereafter to drill a great many more, to produce gas for sale by it in said field to those that it may hereafter contract with to sell gas in said field, including without limitation, Buyer herein, so far as such future sales in the field may be legally compatible with its present contractual obligations including the obligation of this contract, and desires to sell to Buyer the gas produced from certain dedicated acreage hereinafter described or designated; and

Whereas, Buyer is engaged in the business of producing, purchasing, transporting and selling natural gas, at wholesale, to chosen customers and to distributors of natural gas throughout a wide area comprising several states of different climatic and temperature characteristics and, in order to meet the requirements of its said customers, is desirous of obtaining a supply of merchantable natural gas, in addition to its present supply that will be ample in supplementation of its present supply to meet, insofar as is possible, at all times and over a long period of years the demands of its customers at the various times such demands occur in its widely distributed markets, caused not only by the wide geographical area covered but also by quick and drastic changes of temperature and other factors of similar or different nature causing quick and extreme fluctuation. It is necessary, in order that Buyer may economically, efficiently and

adequately utilize the gas to be sold by Seller, that such gas be delivered to it with appropriate continuity and at as [fol. 1218] high pressure as is feasible, especially in view of the fact that the virgin pressure in said field is radically subnormal and substantial lowering of pressure causes large added expense and precarious operations and results for Buyer,

Now, therefore, premises considered, in consideration of the mutual covenants and agreements herein contained, the Seller and Buyer agree with each other as follows:

1. Seller hereby agrees to sell and deliver at a point located on the existed gatherine line, owned or operated by Buyer, near the Northeast corner of Section Thirty-two (32), Township Four (4) North, Range Fifteen (15) East, Texas County, State of Oklahoma, and Buyer agrees to purchase and receive, at said point of delivery, in the current conduct of its business, and in accordance with approved practice in the industry, all the merchantable gas in its natural state of production, except casinghead gas, from wells now drilled and hereafter to be drilled on the premises colored yellow on the map marked Exhibit "A" hereto attached and made a part hereof, comprising approximately 44,000 acres in the Guymon-Hugoton Field as hereinafter defined, during the respective fixed terms of the Seller's present leaseholds on said premises or any renewals or extensions thereof and as long as gas is produced therefrom in paying quantities, excepting line and other unavoidable losses, reserving only sufficient gas for the fuel requirements of developing undrilled units within said premises and operating said premises, including operations for making deliveries to Buyer, after using all of Seller's casinghead and other gas produced from said premises which cannot be used by Buyer.

It is understood that when Seller purchased many of the leases described in Exhibit "A" it accepted titles thereto based only on abstractor's certificates of title, and while Seller intends to obtain complete abstracts of title thereto and have same examined, the result in some instances may be that the title of Sellor's lessor or lessors may not be good and merchantable, and if this should be the case, then the land covered by any such lease, unless the defects in the title are curable to the satisfaction of Seller, may, at Seller's option, be withdrawn from coverage by this contract, and

in that event Seller shall substitute another or other tracts of Seller, if Seller has same available, of the same acreage in Texas County. It is also understood that Seller is in the process of acquiring by exchange or otherwise certain of the leases described in Exhibit "A", but if Seller should fail to consummate such acquisition in any case, then the [fol. 1219] land covered by such lease shall be excluded from this contract and replaced by other tracts of Seller of the same acreage in Texas County is Seller has same available. References hereinafter in this contract to the lands covered by Exhibit "A" shall be understood to be to the lands therein described less any thereof so withdrawn and plus land substituted pursuant to the above provisions, and plus any additional adjacent acreage hereafter procured by Seller and accepted by Buyer. It is further understood that in a few instances of sections of lands described in Exhibit "A" others than Seller own some of the leases and in each such case Seller and such other owner or owners of leases have entered or are about to enter into unitization and joint operating agreements covering lands within the section in order to form in each such sace a six hundred forty acre unit (and such may also be the case in instances of added or substituted lands), and where this is the case Seller agrees to use its best endeavors to purchase at the well such other leaseowner's share of the gas produced from the unit for the life of this contract so that Seller herein may in turn sell and deliver said share of the gas (along with Seller's share) to Buyer herein under this contract.

When Seller has completed its exchange and unitization of various leases as hereinabove set forth and has substantially perfected its title to the dedicated leaseholds, it shall, upon the request of Buyer, execute an appropriate instrument to be recorded in Texas County, Oklahoma, which shall describe the leaseholds dedicated to Buyer hereunder and shall state that the gas to be produced from the same has been contracted to Buyer for the life of the production from such leases.

It is contemplated by the parties hereto that, subject to the productivity of the premises described in Exhibit "A" continuing for such duration, the term of this contract shall extend to April 15, 1965 and as long thereafter as gas is produced from said premises in paying quantities.

2. Seller agrees to install, operate and maintain at its own cost, risk and expense a gathering system consisting of well lines, lateral gathering lines and a gathering line of size and design which, for the volumes of gas to be delivered by Seller and on the basis of pressure drop per mile of line, shall be comparable to the existing gathering system owned or operated by Buyer in the Guymon-Hugoton Field, but not less at any point thereof than four (4) inches in diameter, from its well lines to said point of delivery and to install, operate and maintain such pipe line heaters, regulating devices, drips, separators, and such other or different facilities (not including compressors except in the event [fol. 1220] and as provided for in Paragraph 25 hereof) as may be reasonably necessary to enable Seller to deliver uninterruptedly such gas from its said wells against the varying pipe line pressures at said point of delivery, and so deliver said gas. Seller shall submit to Buyer Seller's design of its said gathering lines and system for Buyer's study and approval and Buyer shall indicate thereon its approval thereof after making such changes therein as Buyer and Seller shall agree upon.

It is further agreed that ownership of Seller's gathering line may be transferred to Buyer upon terms and conditions and at a time to be agreed upon by both parties to this agreement.

3. "Trunk line" is a main transportation line, usually of large diameter, operating at high pressure, and transporting dehydrated gas, from a main field compressor station to market areas.

"Gathering line" as used herein is a line designed to carry gas directly from one or more lateral gathering lines to a main field compressor station or transportation trunk line.

"Lateral gathering line" as used herein is a line carrying gas from one or more well lines to a gathering line.

"Wellline" as used herein is a line carrying gas from one well directly to a line of different nature.

"Guymon-Hugoton Field" as used herein shall mean that portion of the Hugoton Field located in Texas County, Oklahoma.

4. It is understood between the parties that Buyer is now producing gas in the Guymon-Hugoton Field, and may in the future continue to produce gas from its own leaseholds

and/or mineral fee lands now or hereafter owned in the Guymon-Hugoton Field and is now buying in said field, at pipe line delivery, gas from others than Seller and will likely continue such purchases from others. Buyer will endeavor to take such amounts of gas hereunder as will enable Seller, from the date of initial production of its wells, to have produced its wells without unreasonable discrimination as between (a) the wells of Seller and (b) the wells of others from whom Buyer is or may be purchasing gas produced in the Guymon-Hugoton Field and the wells of Buyer in the Guymon-Hugoton Field. It is understood that Buyer shall not be obligated to produce its own wells in the Guymon-Hugoton Field, or purchase gas produced in said [fol. 1221] field from Seller or others than Seller, in greater amounts than it deems appropriate for its business in the exercise of its sole judgment; and Buyer shall not at any time be required to receive amounts resulting from an excess of production from Seller's wells over production at such time from Buyer's own wells similarly rated, whether or not any allocation, prescribed by regulatory authorities, be then in effect. Buyer shall have no responsibility as to the operation or care of Seller's wells nor, unless and until Buyer purchases Seller's gathering system, their respective proration standings or allocations, nor responsibility as to Seller's said gathering system.

It is the intention of the parties hereto that with proper adjustments due to differences in deliverability of wells, Seller shall deliver currently to Buyer and Buyer shall receive currently from Seller under this contract the same proportion of Buyer's current total receipts of gas produced in the Guymon-Hugoton Field that the developed acres of the dedicated premises (computed on the basis of 640 acres developed per well) connected into Buyer's system bears to all-developed acreage (similarly computed) in the Guymon-Hugoton Field connected into Buyer's system.

It is recognized that Buyer will be unable, due to varying operating conditions, to take gas in said exact proportions during any monthly period, but Buyer agrees that it will to the best of its ability, by balancing excesses against deficiencies during periods of reasonable duration, maintain as nearly as reasonably may be done, said proportions from its various sources within the Guymon-Hugoton Field without unreasonable discrimination.

It is contemplated by the parties hereto that, subject to (a) the productivity of the premises described in Exhibit "A", (b) the number of wells drilled upon said premises by the Seller, as permitted the Seller, or as required by the Buyer, under the provisions hereof, and the deliverability of such wells, (c) the provisions hereof with respect to the relation between the amounts of gas produced by Buyer in the Guymon-Hugoton Field, the gas produced by others than Seller in the Guymon-Hugoton Field, and purchased by Buyer, and the takes from Seller under this contract, (d) the requirements of Buyer's customers in the markets served by Buyer and the determination of Buyer as to what portions of such requirements shall be supplied by gas produced in the Guymon-Hugoton Field, and (e) the orders of regulatory authorities having jurisdiction, the Buyer may require the Seller to deliver under this contract approximately twenty-five billion cubic feet of gas per annum.

[fol. 1222] 5. Buyer agrees to install, operate and maintain at its own cost, risk and expense at said point of delivery metering equipment of suitable size and design, for the reception and measurement of gas delivered as specified herein. Seller is to have the right from time to time to inspect Buyer's meter in the presence of a representative of Buyer and to ask for tests thereof and to witness same, but is in no event to alter or in any way disturb, manipulate or tamper with any of the Buyer's equipment.

6. The actual point of delivery of such natural gas purchased hereunder shall be at the inlet to Buyer's drip constructed on the inlet side of the Buyer's said meter setting and after the gas is so delivered by the Seller to the Buyer, Seller shall not be liable to the Buyer for any loss, damage or injury resulting from said gas or its use after it leaves such point of delivery.

7. The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base at sixteen and four-tenths (16.4) pounds absolute pressure per square inch and on a temperature base of sixty (60) degrees Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's Law, that atmospheric pressure is thirteen and two-tenths (13.2) pounds per square inch, and that flowing tem-

perature of the gas in the meter is sixty (60) degrees Fahrenheit.

In the event orifice meters are used for the measurement of gas delivered hereunder, coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computations shall be made in accordance with an approved method and the monthly average of these determinations shall be used respectively at the close of the billing period for calculating the volume of gas delivered hereunder.

8. Seller warrants title to gas delivered hereunder and right to sell same and that it is clear of all liens and adverse claims. In case of adverse claim to the title of any gas purchased hereunder or the land from which it is produced or to any unpaid royalties, Buyer may without otherwise affecting this contract retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished. Seller agrees to furnish Buyer, upon its written request for same, abstract of title to lands and copy of lease.

[fol. 1223] In the event of any such adverse claim, Seller, in its discretion, may, during the pendency of such claim, cease to produce the well involved therein.

9. Upon Buyer's written request, but in no event more often than each six (6) months, Seller agrees to test its wells with a view to ascertaining their open flow, rock pressure and condition. Buyer, if it so elects, may have representatives present at said test, and shall be entitled to receive written reports from Seller on each of said tests.

10. The Buyer shall have the right, when said gas becomes unmerchantable by reason of the oxygen content or from any other or different causes affecting adversely the quality of the gas, or, when the content of said gas renders the reception or transportation thereof in pipe lines owned or operated by Buyer hazardous or difficult, or injurious to its property or to the ultimate consumer thereof, to cease

taking the same until such time as it again becomes merchantable or the causes rendering the reception, transportation and utilization of said gas hazardous, or difficult or injurious, as aforesaid, are corrected; however, under no circumstances will it be urged that the gas available for delivery hereunder is unmerchantable, hazardous or injurious by reason only of excessive oxygen content, unless content exceeds one (1) per cent by volume, or by reason only of excessive hydrogensulphide content, unless such content exceeds one (1) grain per hundred (100) cubic feet or by reason only of excessive sulphur content, unless the total sulphur content exceeds twenty (20) grains per one hundred (100) cubic feet. Seller agrees that it will not mix with the gas delivered to Buyer any gas that contains hydrogensulphide content in excess of three (3) grains per hundred (100) cubic feet. The Seller shall also have the right to cease delivery, if without its fault, by reason of any of the aforesaid causes, said gas becomes hazardous or injurious to receive into its such equipment, when operated in the manner necessary to make said deliveries. The Seller shall, when said gas becomes unmerchantable or the reception, transportation and utilization thereof becomes hazardous, difficult or injurious as aforesaid, with all reasonable promptness, take all reasonable and practicable steps to eliminate and correct the causes rendering the said gas unmerchantable or the causes rendering the reception, transportation and utilization of such gas hazardous, difficult or injurious as aforesaid.

The gas to be delivered hereunder, is assumed, but not guaranteed, to have an average gross heating value of not less than one thousand (1000) BTU's per cubic foot. If, in any fiscal month as herein defined, the average gross heating value of such gas shall fall below nine hundred fifty (950) BTU's per cubic foot the price to be paid by Buyer or [fol. 1224] Seller for gas delivered during such months shall be decreased proportionately to the reduction in gross heating value below one thousand (1000) BTU's per cubic foot. Buyer at no time shall be required to receive gas from Sellwhich has a gross heating value of less than nine hundred (900) BTU's per cubic foot.

The unit of volume for determining gross heating value only shall be one (1) cubic foot of gas saturated with water vapor at a base temperature of sixty (60) degrees Fahren-

heit and at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch.

11. Buyer shall pay Seller for all gas purchased and received by it at the delivery point hereunder the price of four cents (4¢) per thousand cubic feet, and shall also pay Seller one-half cent (½¢) per thousand cubic feet on all said gas to reimburse Seller for its cost of gathering and delivering such gas to the delivery point hereunder, making an aggregate payment of four and one-half cents (4½¢) per thousand cubic feet. Payments shall be made monthly by check, and for all gas delivered hereunder during any fiscal accounting month payment shall be made on or before the 25th day of the next following calendar month. A fiscal accounting month shall be from the 23rd day of one calendar month to the 22nd day, inclusive, of the next succeeding calendar month. Buyer shall accompany each monthly payment with a statement showing the gas delivered during the fiscal month for which settlement is being made. On Buyer's request Seller will execute and supply to Buyer a division order covering the gas to be sold and delivered hereunder. Said price of four (4) cents per thousand cubic feet is not more than the prevailing field price paid for gas at the wellhead in the Guymon-Hugoton Field, and one-half cent (½¢) per thousand cubic feet is a reasonable gathering charge for delivering the gas to Buyer's system.

If Buyer should at any time or from time to time hereafter purchase gas produced from the Guymon-Hugoton Field from a seller or sellers other than Seller herein under a contract or contracts surrounded by circumstances and containing terms and conditions similar to those surrounding and contained in this contract, and shall pay therefor a net price (as that term is hereinafter defined) which is more or less than the net price per thousand cubic feet at the time being paid to Seller herein, then upon the first delivery of gas to Buyer at such higher or lower net price to another seller or sellers, the net price to Seller herein shall be increased or reduced, as the case may be, to coincide with the weighted average net price being paid to such other or others. The term "net price" as used herein shall mean the [fol. 1225] total amount per thousand cubic feet paid by Buyer for the gas delivered by a seller into Buyer's main gathering system, less one-half cent (½¢) per thousand cubic feet, which shall be assumed for the purposes of this

adjustment clause to be the gathering charge. In the event Buyer should purchase from any such other seller at a price delivered to Buyer at the wells of such other seller, then such delivered price shall be the net price in such case. It is the intention of this price adjustment provision that the price paid for gas hereunder shall be the prevailing field price paid for gas at the wellhead in the Guymon-Hugoton field, plus a reasonable gathering charge for delivering gas to the Buyer's system in said field, as determined by the price paid by Buyer to others than Seller as aforesaid.

Upon request of Seller, Buyer shall submit to Seller the records and charts from its measuring equipment, together with calculations therefrom, for Seller's inspection and verification, subject to return by Seller within twenty (20) days from receipt thereof.

Buyer further agrees that should it at any time hereafter make new contracts or amend existing contracts for gas produced in the Guymon-Hugoton Field so as to provide the rein for a basis of measurement more favorable to the seller or sellers therein than that contained in paragraph 7 of this contract, then this contract shall thereupon be amended to provide for such more favorable basis of measurement.

12. All of the property and equipment installed by either of the parties hereto, under the terms of this contract, shall remain the property of that respective party, and each of the parties hereto shall have the right to remove its said equipment whenever it is no longer needed to enable such party to perform its obligations to the other party; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims for damages of whatsoever kind resulting from the operation, maintenance and reclaim of the property, machinery and equipment which it has installed.

13. Seller agrees to promptly notify by telephone the pressure dispatcher of the Buyer at Bartlesville, Oklahoma, or such other agent of Buyer as Buyer may indicate, of any interruptions affecting the delivery of gas hereunder

and also, in order to meet current fluctuations in the requirements of Buyer, to begin, increase, decrease or suspend the delivery of gas hereunder on the telephonic orders of the pressure dispatcher or such other agent of the Buyer.

[fol. 1226] 14. In the event payment for one hundred per cent of the gas purchased hereunder is made by Buyer to Seller, then in that event Seller assumes full and complete responsibility for all payments that may accrue and become due to others on such gas so delivered and the Seller hereby agrees to hold the Buyer harmless from any and all claims for payment to such others on said gas.

15. Buyer shall not be bound by any transfer of any interest in the leases covered hereby, or of the payments herein provided to be made by Buyer, until it has been furnished with the original or a certified copy of such transfer or an abstract of title to the lands involved showing clearly such transfer of interest.

16. In the event the dedicated acreage shall, except as required by the provisions of Paragraph 17 hereof, be developed to a well density in excess of that of the acreage and mineral fee land now leased and owned by Buyer in the Guymon-Hugoton Field, Seller shall not connect with its gathering system the wells causing such excess density and shall not tender to Buyer, and Buyer shall be under no obligation to accept gas from the wells causing such excess density.

17. At any time Buyer may require Seller, upon six months' prior written notice, to further develop the dedicated acreage to the extent of drilling additional wells thereon and connecting them through Seller's gathering system into Buyer's system; provided, however, that Seller shall not be required to drill in excess of ten wells during any twelve months period, and provided further that Seller shall not be required to develop on a spacing pattern exceeding one well to six hundred forty acres.

18. Seller may not increase its sales under this contract by increasing the number of wells drilled beyond the number or in excess of the rate required by Buyer to be drilled under the provisions of Paragraph 17 hereof, or, unless so required, exceeding the said relative parity of

well density set forth in Paragraph 16 hereof. But, nothing contained in Paragraphs 16 and 17 or this Paragraph 18 of this contract is intended to, nor shall anything therein contained authorize conduct by either party hereto that will, prevent or interfere with the development of Seller's leases or any thereof during the primary term thereof or the [fol. 1227] operation of any well or any such lease in such manner and to such extent as may be necessary to constitute a compliance by Seller with the convenants, expressed or implied, of such lease relative to the development and/or operation thereof.

19. Seller will not tender gas to Buyer from wells on any acreage not at the time dedicated hereunder and effectually covered hereby.

20. In the event Seller shall fail, neglect or refuse to drill wells as required by Buyer, or to operate and maintain its said pipe line system and other facilities used in connection therewith in such manner as to enable Seller to deliver such gas to Buyer, as elsewhere provided herein, then in that event the Buyer after at least thirty days' written notice to and demand on Seller to correct or remedy the condition causing such failure, neglect or refusal and Seller's failure within said thirty day period to correct or remedy same (or if same cannot be corrected or remedied in thirty days, then Seller's failure to notify Buyer that Seller is proceeding with all reasonable dispatch to do so and Seller, having so notified Buyer, fails actually to proceed in good faith within said period to do so), then Buyer is hereby authorized, among other things, to enter upon the Seller's property to drill wells or to make repairs and/or additions to Seller's said equipment so that Buyer may secure such immediate delivery of gas hereunder as it may require. The actual cost of Buyer's drilling such wells or making such repairs and/or additions and Buyer's actual cost of operating Seller's said equipment during each such period shall be charged to Seller and same may be deducted from Seller's interest in and to gas theretofore run and not yet paid for, or from such interest in gas to be run subsequent to such periods, or otherwise collected. The provisions of this Paragraph 20 are subject to the provisions of Paragraph 25 of this contract.

21. Seller agrees that it will endeavor, in good faith, to keep and maintain all of its leases on said lands in full

force and effect. If at any time Seller deems any of its leases to have been condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer an assignment of such lease or leases before surrendering same. If Buyer refuses to accept such assignment within three months after the date of tender thereof, then Seller may, at its option, release and surrender such lease or leases. If Buyer accepts such assignment, Buyer shall pay to Seller the reasonable salvage value of the well, casing and equipment thereon and used in connection with the operation of said well.

[fol. 1228] 22. The seasonal variation in the deliveries of gas by Seller and the receipts of gas by Buyer hereunder shall be in proportion to such seasonal variation in the receipts of all gas into the gathering system owned or operated by Buyer in the Guymon-Hugoton Field.

23. Meter measurements found by test to be in error because of mechanical reasons, or otherwise not reflecting actual passage of the gas, in an amount more than two (2) per cent of the actual amount delivered or received, shall be corrected and accounts adjusted accordingly, but the period of adjustment shall not exceed thirty (30) days preceding the test, and all claims of either party as to the gas delivered or received otherwise than as shown by said meters must be referred in writing by such respective party within sixty (60) days from the date of the commencement of such claimed discrepancy and all claims of each party hereto concerning either the comparative amount, as related to other wells, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said period of sixty (60) days.

24. Additional points of delivery for gas to be sold and purchased under this agreement may be required from time to time and may be made, after agreement thereto between the parties, by means of supplemental written instruments based upon and modifying this contract.

25. In the event of Seller's inability to deliver into Buyer's pipe lines the quantities of gas contemplated herein because of inadequate pipe line facilities of Buyer between the point of delivery herein and Buyer's Straight compressor station, then Buyer agrees to proceed with due

diligence to construct such additional pipe line facilities between said point of delivery and said compressor station as are necessary to enable Seller to deliver such quantities of gas to Buyer.

If thereafter Seller shall be unable to deliver the quantities of gas contemplated herein either because of the decline in the natural pressure of Seller's wells or because of inadequate pipe line facilities of Buyer between the point of delivery herein and Buyer's Straight compressor station, Buyer may call upon Seller promptly to construct, operate and maintain, at its own cost, risk and expense, gas compressing equipment of adequate size and design to make such deliveries of gas. In the event that Buyer does not call upon Seller to construct such compressing equipment, Seller may request Buyer to construct such com- [fol. 1229] pressing equipment and should it do so, then Buyer shall construct, operate and maintain the same at its own cost, risk and expense; should Buyer decline to do so, then Seller may proceed to construct, operate and maintain, at its own cost, risk and expense, the necessary compressing equipment.

In the event Seller constructs compressing equipment, as herein provided, Buyer shall reimburse Seller monthly for its cost in connection therewith computed as follows:

(1) A sum estimated by the parties to be sufficient to amortize over the estimated useful life of such facilities the actual reasonable cost of such facilities (Including (a), interest at the rate of four per cent (4%) per annum for the actual period of construction, (b) five per cent (5%) of actual construction cost for general overhead if such facilities are constructed by the Seller or two per cent (2%) of the total contract price if constructed for Seller by others on a turn-key basis), less the net salvage value thereof when no longer needed for compression purposes;

(2) A sum for interest on the investment in the facilities equal to four per cent (4%) per annum of the unamortized cost of such facilities;

(3) A sum equal to the actual cost of operating and maintaining the facilities, including labor, fuel, supplies, taxes (other than income taxes), insurance and other direct operating and maintenance cost, plus Two Hundred Dollars ($200.00) per month as an overhead charge.

Any unamortized cost of such facilities, not paid by the Buyer as provided under (1) above, will be paid in cash by the Buyer to the Seller, when said facilities are no longer needed for said purposes. The Buyer shall have the option of purchasing said facilities, when no longer needed for sai- purposes, at a price equal to the "net salvage value" as used in (1) above.

It is understood that such payments and/or method of payment may be adjusted from time to time by the parties hereto as may be necessary to effectuate the understandings of the parties as expressed herein.

In the event Seller shall use said compressing facilities to compress gas other than that to be delivered to Buyer [fol. 1230] hereunder, the reimbursements of Seller by Buyer herein provided for shall be reduced to the extent that such reimbursements shall be made by Buyer on a pro rata basis for all gas delivered to Buyer through such facilities.

26. Failure of Seller to develop production or construct facilities as required hereby, in addition to the remedies herein elsewhere provided, shall give Buyer the right to demand of Seller, in writing, a compliance with the defaulted requirement, and, if Seller fails within thirty (30) days after such demand to comply or to proceed in good faith and with due diligence with compliance therewith, then Buyer shall have the further right to terminate this contract upon ninety (90) days written notice to Seller.

27. All the terms, covenants and agreements herein shall run in favor of and be binding upon the parties hereto, their successors and assigns; provided that, except for assignments by Seller to any other corporation with which Seller may consolidate or merge, or assignments by Seller to a subsidiary or affiliated company of Seller, Seller shall not assign, in whole or in part, this contract or the dedicated acreage unless Buyer shall consent thereto in writing, but Buyer agrees that it will not arbitrarily or unreasonably refuse to give its consent to any such assignment, nor will it refuse to give its consent to any such assignment if it be to a responsible person, firm or corporation who is deemed to be capable of performing, and who in connection therewith expressly assumes and agrees to perform, the covenants hereof resting upon Seller.

28. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 1231] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a), in those instances where any party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses, and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials, and supplies, permits and permissions.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockout by acceding to the demands of opposing party when such course in inadvisable in the discretion of the party having the difficulty.

29. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

In witness whereof, the parties hereto have executed this instrument in duplicate, one for Seller and one for Buyer, the day and year first above written.

Skelly Oil Company, by Chesley C. Herndon, Vice President, Seller; Cities Service Gas Company, by Geo. H. Baird, Vice-President, Buyer.

Attest: F. T. Hopp, Secretary.
Attest: George Roth, Asst. Secretary. (Seal.)

OK. WP Zg. 8-28-45.

[fols. 1232-1242] STATE OF OKLAHOMA,
County of Tulsa, ss.:

Before me, a Notary Public within and for said County and State on this 28th day of August, 1945, personally appeared Chesley C. Herndon to be known to be the identical person who subscribed the name of Skelly Oil Company, a corporation, as maker thereof, to the foregoing instrument as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

Witness my hand and notarial seal this the day and year last above written.

Grace P. Eskridge, Notary Public. My Commission expires Oct. 3, 1945. (Seal.)

STATE OF OKLAHOMA,
County of Oklahoma, ss.:

Before — a Notary Public within and for said County and State, on this 30th day of August, 1945, personally appeared Geo. H. Baird to be known to be the identical person who subscribed the name of Cities Service Gas Company, a corporation, and maker thereof, to the foregoing instrument as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

Witness my hand and notarial seal this the day and year last above written.

Dorothy Ruddy, Notary Public. My Commission expires May 2, 1949. (Seal.)

(Here follows 1 photolithograph, side folio 1243.)

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Side folio 1243 Not Reproducible

[fol. 1244] EXHIBIT 72

Gas Purchase Contract

Dated February 28, 1946

Republic Natural Gas Company

and

Cities Service Gas Company

[fol. 1244-1] Gas Purchase Contract

This Contract, made and entered into this twenty-eighth day of February, 1946, by and between Republic Natural Gas Company, a Delaware corporation as party of the first part, with its general business office at Dallas, Texas, hereinafter referred to as "Republic".

And Cities Service Gas Company, a Delaware corporation as party of the second part, with its general business office at Oklahoma City, Oklahoma, hereinafter referred to as "Cities".

Article I

Recitals

It is hereby recited that:

(a) Republic is a private corporation, and its sole and only business and activity in the State of Oklahoma is engaging in the business of the production and gathering of natural gas, and the sale thereof, to its chosen customers within the limits of the actual producing area in the Guymon-Hugoton gas field. Republic is not now engaged, and does not intend to engage in any other business in said gas field, and has not engaged, and is not engaged in the business of purchasing natural gas from its competitive producers, or otherwise, and does not transport any gas produced by it in the channels of interstate commerce, and all of its wells, facilities and gathering lines used to produce such natural gas are located in Texas County, Oklahoma, and not otherwise.

Republic owns and operates oil and gas leases, comprising in excess of ninety-six thousand (96,000) acres in said Guymon-Hugoton field in Texas County, Oklahoma; has drilled numerous gas wells thereon and intends to drill additional

wells thereon; has heretofore constructed a gathering system connecting wells heretofore drilled to the pipe lines of Cities and intends to extend and enlarge said gathering system to connect wells hereafter to be drilled and to enable it to deliver gas produced from said leaseholds to Cities in accordance with the terms and conditions of this agreement. Republic desires to sell to Cities, as herein pro- [fol. 1244-2] vided, gas produced from said gas lands and gas leaseholds; and

(b) Cities is engaged in the business of producing, purchasing, transporting and selling natural gas, at wholesale, to chosen customers and to distributors of natural gas throughout a wide area comprising several states of different climatic and temperature characteristics. In order to meet the requirements of its said customers, it is desirous of obtaining, from time to time, supplies of merchantable natural gas, in addition to its present supply, that will be ample to meet, insofar as is possible, at all times and over a long period of years the demands of its customers at the various times such demands occur in its widely distributed markets. It is necessary, in order that Cities may economically, efficiently and adequately utilize the gas to be sold by Republic, that such gas be delivered to it with appropriate continuity, at as high pressure as is feasible and with due regard to quick and extreme fluctuations in the market demand of Cities.

Article II

Definitions

Unless the contrary shall clearly appear, the following words, terms, and phrases shall have, for the purposes hereof, meanings as follows:

(1) "The Hugoton Field", as used in this agreement, means that gas producing area located in the Counties of Stevens, Morton, Stanton, Grant, Haskell, Seward, Kearny, and Finney, in the State of Kansas; Texas County, in the State of Oklahoma; and the Counties of Hansford and Sherman, in the State of Texas; together with any extension of said field. The term "Guymon-Hugoton Gas Field" shall mean that part of said Hugoton gas field located in the County of Texas, State of Oklahoma.

(2) The term "Dedicated Acreage" means the gas rights in the gas lands, and gas leases described in Exhibit "A", attached hereto, down to but not below the depth of 3,000 feet.

[fol. 1244-3] (3) The term "Natural Gas" means gas produced in its natural state, including all minerals included in and produced as a part of such natural gas, but the term "Natural Gas" does not include any natural gas produced in connection with the production of oil.

(4) The term "Deliverability" means that quantum of measurement of the productive capacity of a well as defined by the rules, regulations and orders of the Corporation Commission in the State of Oklahoma, as now determined or hereafter fixed, and in event such deliverability shall cease to or no longer be defined by the Corporation Commission of the State of Oklahoma, or some other State or Federal regulatory body having lawful jurisdiction, then by such reasonable determination as the parties may agree, or failing therein, a fair standard for the determination of the ability of the various wells in the Guymon-Hugoton Gas Field to produce gas against a reasonable percentage of the average seventy-two (72) hour shut-in pressure of all the wells in said portion of said field.

(5) For the purposes of this contract the "Fiscal Accounting Month" shall be that period extending from the twenty-third (23rd) day of each month to the twenty-second (22nd) day of the next succeeding month, inclusive.

Article III

Gas to Be Purchased and Sold

Section 1. *Gas to Be Purchased and Sold.* Subject to the terms and conditions and within the limitations hereinafter set forth, Republic agrees to sell and deliver to Cities, hereunder, and Cities agrees to purchase and receive from Republic, all natural gas produced from a depth of three thousand (3,000) feet or less from the 96,492.48 acres of gas lands and gas leases located in Texas County, Oklahoma, which are described in Exhibit "A", attached hereto,

and made a part hereof, or from gas rights in the gas lands and gas leases substituted therefor as herein provided.

[fol. 1244-4] Section 2. *Republic's Obligation to Deliver.*

(a) Republic shall deliver gas hereunder to Cities in such volumes and at such times as requested by Cities up to the delivery capacity of the wells of Republic located on the acreage specified in Exhibit "A".

(b) *Limitation on Republic's Obligation.* Republic reserves the right to use gas produced from said acreage for:

(i) Fuel when required to drill oil or gas wells on such acreage, and gas used incident to all other operating requirements;

(ii) Fuel when required for use in internal combustion engines employed in lifting oil to the surface of the ground from any oil well hereafter drilled on such acreage;

(iii) Fuel for stoves and inside lights in the principal dwellings located on the leaseholds described in Exhibit "A", to the extent required by the present oil and gas leases on such acreage, and to supply gas required under right-of-way and similar agreements;

(iv) Natural gas which Republic shall hereafter sell to the City of Guymon, Oklahoma, a municipal corporation, under the terms of a contract dated January 4, 1946, and any extensions thereof.

Section 3. *Obligation to Purchase Gas.* Subject to the ability of Republic's wells and gathering system to deliver natural gas hereunder, Cities agrees to purchase and receive from Republic hereunder ratably with all natural gas purchased and/or produced by Cities in the Guymon-Hugoton portion of the Hugoton Gas Field, such natural gas as may from time to time be produced by Republic from the dedicated acreage herein set forth. "Ratably" as herein used means in accordance with well allowables lawfully fixed and determined by the Corporation Commission of the State of Oklahoma, and if well allowables shall cease to be fixed by said Commission or other regulatory body having juris-[fol. 1244-5] diction thereover, then in accordance with the "deliverability" of the wells, and the acreage attributable

thereto, from which Cities shall be producing and purchasing gas from time to time.

Section 4. *Rate of Delivery.* So far as practicable, and without interruption, Republic shall deliver, and Cities shall take gas hereunder, having due regard for the seasonal variation in the receipts of all gas into the main compressor station operated by Cities in Texas County, Oklahoma.

Cities agrees to notify Republic of any anticipated substantial increase in its daily requirements, and Republic agrees to notify promptly the pressure dispatcher of Cities, at Bartlesville, Oklahoma, or such other agent as Cities may indicate, of any interruptions affecting the delivery of gas hereunder, and also, in order to meet current fluctuations in the requirements of Cities, to begin, increase, decrease or suspend the delivery of gas hereunder on the telephonic orders of the pressure dispatcher, or such other agent of Cities.

Article IV

Price, Payment and Taxes

Section 1. *Initial Price.* Cities shall pay Republic for gas purchased and received by it hereunder, the price of four cents ($0.04) per thousand (1,000) cubic feet, and shall also pay Republic one-half cent ($0.005) per thousand (1,000) cubic feet on all said gas to compensate Republic for the cost of gathering and delivering such gas, making an actual payment of four and one-half cents ($0.045) per thousand (1,000) cubic feet. Such price of four cents ($0.04) shall prevail until the first day of March, 1951, it being agreed that the one-half cent ($0.005) for gathering and delivering shall maintain for the life of this contract. Said price per thousand (1,000) cubic feet is not more than the prevailing field price paid for gas at the well head in the Guymon-Hugoton field, and one-half cent ($0.005) per thousand (1,000) cubic feet is a reasonable gathering charge for delivering gas to the delivery point provided herein.

[fol. 1244-6] Section 2. *Adjustment of Price of Gas.* For all natural gas delivered hereunder during the five year period commencing on the first day of March, 1951, and during each five year period thereafter during the life of the con-

tract, the price of such gas shall be subject to adjustment, and shall be adjusted and established for each five year period as follows:

(a) *By Agreement of Parties.* Not less than six months before the first day of March, 1951, and not less than six months before the end of each five year period thereafter succeeding, during the life of this agreement, Cities and Republic shall endeavor to agree upon a price to be paid by Cities for gas to be delivered hereunder during the next succeeding five year period. Such price, if so agreed upon by the parties, shall govern for a period of five years next ensuing the then current period.

(b) *By Arbitration.* In event the parties shall fail to agree upon said price prior to the expiration of four months before the first day of March, 1951, or four months before the expiration of any such five-year period thereafter succeeding, the determination of such price shall be by arbitration as herein provided.

(i) In event of such arbitration, the parties shall mutually select a nationally known firm of consulting engineers, experienced in the gas business, and of the highest reputation and standing, and of unimpeachable integrity, which firm shall have no interest in either Cities or Republic, or in the production, transportation, or sale of natural gas in the Hugoton or Texas-Panhandle gas field.

(ii) In event the parties cannot agree upon the selection of such a firm as arbitrator, the Judge of the District Court of the United States, having jurisdiction in Texas County, Oklahoma, shall be requested to select a firm to act as such arbitrator hereunder. In event of failure or refusal of such District Judge to act, then either party may request any member of the United States Circuit Court of Appeals for the [fol. 1244-7] Tenth Circuit to make such selection. It is understood that none of said Judges named have any official jurisdiction over said matter, but will act individually in making such selection. The designation of such Judge in his individual capacity is because of the confidence placed in such individual by the parties hereto.

(iii) Upon the selection of such firm as arbitrator as herein provided, said arbitrator shall proceed to determine the fair, just and reasonable price to be paid by Cities for gas to be delivered hereunder during the period for which said arbitration is had, and the decision of said arbitrator, in the absence of fraud or bad faith, on the part of the arbitrator, shall be final and binding upon both parties.

(iv) The arbitrator shall, within thirty (30) days from the date of its appointment, designate a time and a place for hearing of such statements, evidence, and arguments as the parties may desire to submit, supporting the claims of either party as to the fair, just and reasonable price per thousand (1,000) cubic feet of gas to be delivered by Republic to Cities for the ensuing five-year period.

Such arbitrator shall be privileged to seek the assistance of experts and men of practical experience in the natural gas business in its considerations.

(v) The parties hereto shall pay such arbitrator, including the fees and expenses incurred by them in obtaining the assistance of experts and others so secured by the arbitrator, share and share alike.

(vi) In the event such arbitrator shall fail to reach a decision in four months after his appointment, such arbitrator shall be discharged and a new arbitrator shall be selected in like manner as if no arbitrator had been chosen.

[fol. 1244-8] (vii) It is expressly stipulated that the delivery of gas by Republic under this agreement shall not be interrupted because of delay in any determination of the price applicable to delivery of gas for any period, and the delivery of gas shall continue at the last previous effective price. Upon determination of the price effective for the period to which the arbitration applies, the price shall be applied retroactively to gas previously delivered, for the period during which the adjusted price shall be effective.

Section 3. *Payments.* Cities shall make payment monthly by check to Republic on or before the twenty-fifth (25th) day of each month for all gas delivered hereunder during

the preceding "fiscal accounting month", as defined in (5), Article II hereof.

Said payments by Cities to Republic shall be made upon the basis of a monthly statement rendered by Cities to Republic at the time of payment for gas delivered hereunder. Republic may accept such statement, and the payment based thereon, and in event the same is found incorrect under the provisions hereof, adjustments and payment shall be made accordingly.

Section 4. *Taxes.* The existing gross production tax of five (5%) per centum of the sale price per thousand (1,000) cubic feet of gas, now assessed by the State of Oklahoma, shall be paid wholly by Republic. Any increase in, or additional production, severance, sales, delivery or other excise taxes hereafter imposed by, and accruing to the State of Oklahoma, or any subdivision thereof, or to the Federal Government, upon or by reason of the production, severance, sales or delivery of gas by Republic to Cities hereunder, shall be shared equally by Cities and Republic in respect to the volume of gas delivered hereunder.

Article V

Measurement

Section 1. *Unit of Measurement.* The unit of measurement for natural gas hereunder shall be a cubic foot of gas, and the term "cubic foot of gas" wherever used in this [fol. 1244-9] contract shall mean a cubic foot of gas at 16.4 pounds absolute pressure per square inch, and at a temperature of Sixty Degrees (60°F.) Fahrenheit; provided, however, the unit of measurement for the determination of heating value, hydrogen sulphide, and sulphur content shall be a cubic foot of gas, saturated with water vapor, at an absolute pressure of thirty (30) inches of mercury and a temperature of Sixty Degrees (60°F.) Fahrenheit.

Section 2. *Computation of Volume of Gas Delivered.* The volume of gas delivered hereunder shall be measured at prevailing meter pressures, and the volume thereof shall be computed on a pressure base of sixteen and four-tenths (16.4) pounds per square inch absolute, and on a temperature base of Sixty Degrees (60°F.) Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys

Boyles' Law, and flowing temperature of the gas in the meter is Sixty Degrees (60°F.) Fahrenheit.

In the orifice meters used for the measurement of gas delivered hereunder, coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are One (1). Specific gravity determinations for the purpose of measurement computations shall be made in accordance with an approved method and the monthly average of these determinations shall be used respectively at the close of the billing period for calculating the volume of gas delivered hereunder.

The gas to be delivered hereunder is assumed, but not guaranteed, to have an average gross heating value of not less than one thousand (1,000) B.T.U.'s per cubic foot. If, in any fiscal accounting month, as herein defined, the average gross heating value of such gas shall fall below nine hundred fifty (950) B.T.U.'s per cubic foot, the price to be paid by Cities to Republic for gas delivered during such months shall be decreased proportionately to the deficiency in gross heating value below one thousand (1,000) B.T.U.'s per cubic foot. Cities at no time shall be required to receive [fol. 1244-10] gas from Republic which has a gross heating value of less than nine hundred (900) B.T.U.'s per cubic foot.

Section 3. *Meters.* Cities, at its own expense, shall install and maintain in accurate repair at the point of delivery hereinafter specified, orifice meters of ample size and type and of standard manufacture for the accurate measurement of gas delivered hereunder, and Cities will cause said meters to be read each day.

The meters and respective meter readings and meter charts of Cities shall be at all reasonable times accessible to inspection and examination by Republic. The meters shall be calibrated once each month by and at the expense of Cities, but in the presence of a representative of Republic, if Republic so elects. Reading, calibration and adjustment of Cities' meters, and changing of charts, shall be done only by Cities, but all data with respect thereto shall at all reasonable times be available to Republic.

Section 4. *Check Meters.* Republic may, at its option and expense, install and operate check meters to check Cities' meters, but measurement of gas for the purposes of this agreement shall be by Cities' meters. Check meters shall be of the orifice type, and shall be subject at all reasonable times to inspection or examination by Cities, but the reading, calibration and adjustment thereof, and changing of charts, shall be done only by Republic. Should the check meters be located on the premises of Cities, Cities grants to Republic the right of free use of said premises and ingress and egress to such check meter at all times for purposes of installation, operation, repair and/or removal.

Section 5. *Adjustment of Inaccuracies.* If any meter is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and if the error shall have resulted in an error of more than 3% in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to par accuracy to [fol. 1244-11] compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last meter test. In no event, however, shall any correction extend back beyond one month from the date the error was first made known by one party hereunder to the other.

Article VI

Quality

Natural gas delivered hereunder shall be merchantable gas, conforming to the following specifications:

(1) *Sulphur.* The gas shall not contain in excess of one grain of hydrogen sulphide per hundred cubic feet, and shall not contain in excess of twenty grains of total sulphur per hundred cubic feet.

(2) *Natural Gasoline.* The gas shall be in its natural state as produced, including natural gasoline and all other hydrocarbons therein contained.

(3) *Heating Value.* The gas shall have a gross heating value of not less than nine hundred (900) B.T.U. per cubic foot.

(4) *Miscellaneous.* The gas shall be practically free of water, crude oil, impurities and other objectionable substances, and Republic shall use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances.

Cities shall have the right, at its election, to discontinue or to curtail deliveries of gas hereunder, whenever the quality of the gas does not conform to the above specifications.

ARTICLE VII

Delivery Pressure and Point of Delivery

SECTION 1. *Delivery Pressure.* Delivery of natural gas hereunder shall be made by Republic at the highest pressure which can be efficiently maintained by the natural [fol. 1244-12] pressure of gas from the wells connected to Republic's gathering system. Said pressure shall be sufficient to deliver the quantities of gas provided for herein at the point of delivery to Cities hereunder against the pressures existing from time to time at such point of delivery.

SECTION 2. *Delivery Point.* The actual point of delivery of natural gas purchased hereunder shall be at the inlet of Cities' drip constructed on the inlet side of Cities' said metering equipment, which shall be installed at a point in Republic's main gathering line near the center of the West line of Section 30, Township 5 North, Range 15 ECM, in Texas County, Oklahoma. The title to said gas shall pass to and vest in Cities, and Republic shall have no control over said gas after its delivery to Cities as herein provided.

SECTION 3. *Transmission from the Measuring Station to Compressor Station.* For the purpose of facilitating the transmission of natural gas delivered hereunder at the measuring station to the compressor station of Cities, located in Section 28, Township 5 North, Range 15 ECM, Republic agrees that it will cause to be constructed a line between the points of measurement hereunder and the compressor station, in accordance with the specifications of Cities, which line shall be and remain the Property of Republic, but shall be leased to Cities under a lease agreement for the rental of One Dollar ($1.00) per year, for the

duration of this contract, and Cities shall have full control over said line, the operation and maintenance of said line, and shall at its own cost and expense pay the cost of all normal operations and maintenance. In the event major repairs or replacements are necessary, Republic will reimburse Cities for the reasonable and actual cost of the replacement and major repairs so made by Cities.

If during the term of this contract, it shall be necessary to install any other or additional lines between the points aforesaid, the same shall be installed and leased to Cities, under the same conditions as above provided.

SECTION 4. *Compressor Stations.* If Republic shall be unable to deliver the quantities of gas contemplated herein [fol. 1244-13] because of the decline in the natural pressure of Republic's wells, Cities may call upon Republic promptly to construct, operate and maintain, at its own cost, risk and expense, gas compressing equipment of adequate size and design, together with the necessary lines and equipment, to make such deliveries of gas.

In the event Republic constructs compressing equipment, as herein provided, Cities shall reimburse Republic monthly for its cost in connection therewith computed as follows:

(a) A sum estimated by the parties to be sufficient to amortize over the estimated useful life of such facilities the actual reasonable cost of such facilities (including interest at the rate of four (4) percent per annum for the actual period of construction, and five (5) percent of actual construction cost for general overhead if such facilities are constructed by Republic, or two (2) percent of the total contract price if constructed for Republic by others on a turnkey basis), less the net salvage value thereof when no longer needed for compression purposes.

(b) A sum for interest on the investment in the facilities equal to four (4) percent per annum of the unamortized cost of such facilities.

(c) A sum equal to the actual cost of operating and maintaining the facilities, including labor, fuel, supplies, taxes (other than income taxes), insurance and other direct operating and maintenance costs, plus Two Hundred Dollars ($200.00) per month as an overhead charge.

Any unamortized cost of such facilities, not paid by Cities as provided under (a) above, will be paid in cash by Cities to Republic, when said facilities are no longer needed for said purposes. Cities shall have the option of purchasing said facilities, when no longer needed for said purposes, at a price equal to the "net salvage value" as used in (a) above.

It is understood that such payments and/or method of payment may be adjusted from time to time by the parties [fol. 1244-14] hereto as may be necessary to effectuate the understandings of the parties as expressed herein.

Article VIII

Gas Leaseholds, Wells and Gathering Lines

Section 1. *Gas Leaseholds.* Republic represents that it is the owner of the gas rights above a depth of three thousand (3,000) feet under gas leases, oil and gas leases, or mineral rights covering the lands set forth and described in Exhibit "A", hereto attached, and made a part hereof. Subject to the provisions contained in this Article VIII concerning the possible reduction and substitution in said acreage, Republic agrees and covenants that it will, at its own cost and expense, maintain such gas rights and mineral rights, and substitutions therefor, in full force and effect until said leases and rights are either perpetuated by production by gas wells drilled thereon, or released from the dedication, as herein provided, or until units of approximately 640 acres each are proven unproductive of gas in commercial quantities by the completion of a dry hole on such unit, or until such leases have been tendered to Cities as herein provided. Provided further that fractional sections, as surveyed by the United States Government, lying along the Kansas-Oklahoma border, may, for the purposes of this contract, be included as a part of a production unit when added to the section immediately thereto adjoining, even though by so doing the production unit will comprise more than 640 acres.

Section 2. *Substitution and Rearrangement of Acreage.* Republic shall have the right, from time to time, to substitute acreage of equal value and extent, for a like amount of acreage described and included in Exhibit "A" (or acreage substituted therefor), except acreage held by

producing wells which are now located, or may hereafter be drilled thereon, upon the following conditions:

(a) That Republic shall have first obtained the written approval of Cities to such substitution, (and Cities agrees that it will not capriciously or unreasonably withhold its approval);

[fol. 1244-15] (b) That any substituted acreage shall, upon substitution, immediately become impressed with the lien of dedication in the same manner and to the same extent theretofore attaching to the acreage described in Exhibit "A" (or acreage substituted therefor) for which substitution is made; and

(c) Republic shall prepare and forward to Cities, for execution, a written release, in recordable form, (which Cities will execute and acknowledge), which by its terms shall release from the lien of dedication the acreage described in Exhibit "A" (or acreage substituted therefor) for which other acreage has been substituted.

Republic shall have the right to rearrange and adjust acreage comprising its existing and future production units, in order to comply with existing and future orders of the Corporation Commission of the State of Oklahoma, including the right to exchange acreage for such purposes.

Republic agrees, upon request by Cities, to furnish such abstracts, certificates or other evidence of title possessed by Republic, to the acreage described in Exhibit "A" (or acreage substituted therefor) for examination only. Republic agrees also, upon request by Cities, to furnish authenticated copies of Republic's leases, unit operating agreements, attorneys' opinions and other legal instruments and pertinent title papers incident thereto covering said acreage.

SECTION 3. *Additional Wells.*

(a) Republic, at the execution of this contract, has fifty-four (54) gas wells now completed and producing upon the dedicated acreage described in Exhibit "A", and it is agreed that Republic shall have the right in the conduct of its busjness to drill additional wells upon

any one or more of the gas leaseholds covered by said Exhibit "A", and to attach such wells to the gathering system, and deliver gas therefrom under this contract, whenever the drilling of such additional wells is necessary to the protection of the leasehold estates against [fol. 1244-16] termination, and to comply with the covenants, expressed or implied, of such leases relative to the development and/or operation thereof.

(b) Nothing in this agreement shall be construed to prevent Republic from drilling any, and as many, wells as it desires to drill upon the dedicated acreage, whether required or not by the provisions of (a) above, but unless such wells be drilled in accordance with the terms of this Article, the same shall not be used to increase the total deliveries to Cities hereunder until the same shall have qualified under some one or more of the provisions of this agreement.

(c) Cities may require Republic, upon the giving of a six months' prior written notice to further develop the dedicated acreage by drilling additional wells thereon, and to connect same to Republic's gathering system, and deliver the gas produced therefrom to Cities hereunder; whether the drilling of such wells be necessary or not, to comply with (a) and (b) above; provided, however, that Republic may not be required under this Section to drill more than ten (10) additional wells during any twelve (12) months' period; and provided further that Republic shall never be required to develop on a spacing pattern exceeding one well to each approximate six hundred forty (640) acres of land.

(d) Except as provided in (a) and (c) above, Republic shall not be entitled to increase its total deliveries of gas hereunder to Cities by reason of any well, or wells, drilled upon the dedicated acreage (or substituted acreage), which have been drilled in excess of the well density of the acreage under lease to and mineral fee land now owned by Cities in the Guymon-Hugoton Gas Field, without the prior written consent of Cities to the drilling of said additional well, or wells.

(e) Except as provided in this Article, Republic shall not increase the sales under this contract by in-

[fol. 1244-17] creasing the wells drilled by it, in excess of those permitted under the provisions of (a) and (c) above.

(f) If the event Republic shall fail and neglect to drill any well, or wells, if and when required by Cities in (c) above, then in that event, Cities, after at least thirty (30) days written notice to, and demand upon Republic to drill such well, or wells, Republic shall grant to Cities the right to enter upon the gas lands and gas leaseholds, and to drill for gas upon Republic's gas leases and gas lands in said Guymon-Hugoton area to the depth that such rights are dedicated hereunder. Cities, in event it so elects to drill a well, or wells, shall pay all expenses of drilling and equipping such well, or wells, and if such well, or wells, shall produce gas in commercial quantities, Republic shall connect such well, or wells, to its gathering-system at its expense, and Cities shall take such gas ratably as herein provided from such well, or wells. Cities will include such gas in statements at the same price applicable at the time, to other gas sold by Republic to Cities under this agreement, and shall pay one-eighth (1/8) of the proceeds of the sale of gas, plus the gathering charge as herein provided, from such well, or wells, to Republic, and Cities shall be entitled to retain seven-eighths (7/8) of the proceeds from the sale of gas from such well, or wells, so drilled by it, until Cities shall have been reimbursed for its cost in drilling such well, or wells, and equipping same. When Cities shall have been so reimbursed for its actual cost of drilling and equipping such well, or wells, the same shall become the property of Republic, and Cities shall by appropriate instrument release all claim of right and title therein to Republic.

(g) Republic agrees that it will endeavor, in good faith, to keep and maintain all of its leases on said lands in full force and effect. If at any time Republic deems any of its leases to have been condemned, and no longer of any value, or undesirable for it to keep or [1244-18] develop, it shall tender to Cities an assignment of such lease or leases before surrendering or otherwise disposing of same. If Cities declines to accept such assignment within thirty (30) days after

the date of tender thereof, then Republic may, at its option, release and surrender, or otherwise dispose of such lease or gas rights. If Cities accepts such assignment of any lease upon which there is a gas well, Cities shall pay to Republic the reasonable salvage value of the well, casing and equipment thereon and used in connection with the operation of said well, or wells.

Article IX

Dedication of Gas Rights, Wells, Gathering Lines and Facilities

Subject to the right of substitution, withdrawal, surrender, and disposal of gas acreage and gas rights, under the terms and limitations set forth in Sections 2 and 3 (f) respectively, of Article VIII, Republic agrees that all of its gas rights in the gas lands and gas leases, down to a depth of three thousand (3,000) feet (but not below 3,000 feet), set forth and described in Exhibit "A", which is attached hereto and made a part hereof, covering 96,492.48 acres (which shall, except as such total may be reduced by the withdrawal, surrender, or disposal of leaseholds as provided in Sections 2 and 3 of Article VIII hereof, at all times during the effective term of this agreement constitute the minimum reserve hereunder), together with all wells drilled thereon as herein contemplated which are productive of gas produced from depths above three thousand (3,000) feet in commercial quantities, and all gathering lines connecting said wells with the pipe line of Cities at the point of delivery hereunder, are hereby exclusively dedicated and devoted to the fulfillment and performance of this agreement and this contract is hereby expressly made a lien on said gas rights, wells and gathering system. Republic covenants and agrees that it will not sell gas produced from depths above three thousand (3,000) feet from any of the dedicated acreage, so long as the same remains [fol. 1244-19] dedicated, to any party other than Cities and that it will not use, or suffer, or permit any of the dedicated gathering system and appurtenant facilities to be used in connection with any sale or delivery of gas to any party other than Cities, except for the uses permitted herein.

Article X

Title to Gas

Republic warrants the title to the natural gas sold and delivered to Cities hereunder and that Republic has good right and lawful authority to sell the same as herein provided, and Republic agrees to indemnify and save Cities harmless from any and all suits, claims and liens of whatsoever nature relating to such gas or the title thereto, and agrees that if Republic's title thereto shall at any time be questioned or involved in litigation, Cities shall have the right to withhold payments (without interest) during the period of such litigation, or until said title is freed from such question, but only as to the particular property in litigation or dispute, the proceeds payable in respect of the gas produced from such property or until Republic shall furnish to Cities a bond conditioned to save Cities harmless in form and with sureties acceptable to Cities.

Article XI

Liability of Parties

Each of the parties hereto assumes full responsibility and liability in the maintenance and operation of its respective properties, and those under the respective control of said parties, and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims or actions, including injury to and death of persons, arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party.

[fol. 1244-20]

Article XII

Force Majeure

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of

the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where any party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercises of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b) in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part [fol. 1244-21] of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

Article XIII

Term of Contract

This contract shall become effective March 1, 1946, and shall continue in force for a period of twenty (20) years and thereafter so long as natural gas can be delivered hereunder in commercial quantities, as determined by Cities.

Article XIV

Miscellaneous

Section 1. *Notices.* Any notice or notices given by either party under the terms of this agreement shall be sent by registered mail to the following addresses:

(a) Republic Natural Gas Company, 1505 Federal Street, Dallas 1, Texas.

(b) Cities Service Gas Company, First National Bank Building, Oklahoma City 1, Oklahoma.

Either party may change its address under this Section at any time upon written notice.

Section 2. *Commission Jurisdiction.* All of the provisions of this contract are subject to all valid legislation, State or Federal, with respect to the subject matter hereof, and to [fol. 1244-22] all valid present and future gas proration and other applicable orders, rules and regulations of duly constituted authorities having jurisdiction. It is understood and agreed that when and if any legislation, orders, rules and regulations, present or future, which are valid, shall affect and modify any of the provisions of this agreement, each party hereto shall, as nearly as possible and practicable under such modification, continue faithfully to fulfill, perform and comply with each of their respective agreements, covenants and undertakings set forth in this contract.

Section 3. *Republic's Right to Audit.* Republic shall have the right to audit annually Cities' records insofar as same may be necessary to determine whether Cities has within practical limitations taken gas ratably as herein provided.

Section 4. *Parties to Facilitate Performance.* Each of the parties hereto expressly covenants and agrees with the

other that it will at all times further and not obstruct the performance of the agreements, covenants and undertakings imposed upon the other party under this contract, and that each of the parties will fulfill and punctually perform and comply with each and all of their respective agreements, covenants and undertakings.

Section 5. *Contract Contemplates Compliance with Cities' Mortgage Obligations.* It is contemplated by the parties hereto that, subject to (a) the productivity of the premises described in Exhibit "A", (b) the number of wells drilled upon said premises by Republic, as permitted Republic, or as required by Cities, under the provisions hereof, and the deliverability of such wells, (c) the provisions hereof with respect to the relation between the amounts of gas produced by Cities in said field, the gas produced by others than Republic in said field and purchased by Cities, and the takes from Republic under this contract, (d) the requirements of Cities' customers in the markets served by Cities and the determination of Cities as to what portions of such requirements shall be supplied by gas produced in said field, and (e) the orders of regulatory authorities having jurisdiction, Cities may require Republic to deliver [fol. 1244-23] under this contract approximately 36,500,000,000 cubic feet of gas per annum, and that such together with other applicable provisions of this contract, will accomplish compliance with the provisions of Cities' outstanding mortgage obligations.

Section 6. *Sale of Properties to be Subject to Contract.* Republic and Cities mutually covenant and agree that if at any time during the effective period of this contract either party shall sell or otherwise dispose of any of its properties which are applicable to and used in the performance of this contract, such sale or disposition shall only be made to a responsible party and specifically subject to this gas purchase contract; provided, however, that nothing herein contained shall be construed to prevent either party from pledging all or any portion of its property as security under any mortgage, deed of trust, or other similar lien, or from pledging this contract or any benef-ts accruing hereunder to the party making the pledge.

Section 7. *Assignments.* This contract, and each of its covenants and obligations, shall inure to the benefit of and

be binding upon the successors, trustees and assigns of the respective parties hereto.

Section 8. *Headings.* The headings of Articles and Sections herein are for convenience only, and are not to be considered as interpreting or construing any of the provisions of this agreement.

Section 9. *Contract of July 19, 1943, Superseded.* This agreement, upon its becoming effective, shall supersede the certain agreement entered into on the nineteenth day of July, 1943, by and between Republic Natural Gas Company, therein referred to as the Seller, and Cities Service Gas Company, therein referred to as the Purchaser, and from and after the taking effect of this agreement, all provisions of said above described contract, except as to payment for gas delivered thereunder, are hereby terminated and ended.

Section 10. *Counterparts.* This contract may be simultaneously executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; [fol. 1244-24] but such counterparts shall together constitute but one and the same instrument.

In Witness Whereof, the parties hereto have duly executed this contract, as of the date herein first above written.

Republic Natural Gas Company, by W. H. Wildes (Signed), President.

Attest: L. J. Golden (Signed), Secretary. (Seal.)
Date executed, February 28, 1946.

Cities Service Gas Company, by S. B. Irelan (Signed) President.

Attest: G. C. Roth (Signed), Assistant Secretary. (Seal.)
Date executed, February 28, 1946.

[fol. 1244-25] State of Texas,
County of Dallas

On this 28th day of February A. D. 1946, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared W. H. Wildes, President of Republic Natural Gas Company, a corporation, to me known to be the identical person who subscribed the

name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

(Signed) Martha Hughes, Notary Public. My Commission expires June 1, 1947. (Seal.)

[fol. 1244-26] STATE OF OKLAHOMA,
County of Oklahoma

On this 28th day of February A. D. 1946, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared S. B. Irelan, President of Cities Service Gas Company, a corporation, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

(Signed) Bonnie Hiller, Notary Public. My Commission expires August 9, 1948. (Seal.)

[fol. 1244-27]

EXHIBIT A

Of Dedicated Acreage Referred to in Section 1 of Article III

Acreage Held by Producing Wells

Lease No.	Name	Description	Acreage
151	Langley	SW/4 13-6-14	160.00
153	Parker	Lots 1 and 2 of 7 and NW/4 18-6-15	256.00
154	Ralstin	SW/4 23-6-14	160.00
195	Clinkingbeard	NW/4 21-6-14	160.00
196	Clinkingbeard	SW/4 21-6-14	160.00
272	Mueller	NE/4 24-6-14	160.00
273	Mueller	SW/4 24-6-14	160.00
276	Johnson	NW/4 13-6-14	160.00
290	Simmons	NE/4 22-6-15	160.00
292	Bunger	S/2 13-6-15	320.00
295	Powell	SE/4 23-6-15	160.00
297	Bunger	SW/4 18-6-16	155.37
307	Judd	S/2 24-6-15	320.00
308	Judd	NW/4 25-6-15	160.00
309	Judd	NE/4 24-6-15	160.00
320	Phillips	Lots 1 and 2 of 8-6-14	70.24
330	Wells	W/2 1-4-14	298.48
333	Baker	SW/4 36-5-14	160.00
459	Curtis	SW/4 16-6-16	160.00
460	Curtis	SE/4 16-6-16	160.00
461	Curtis	NE/4 16-6-16	160.00
493	Ewing	SE/4 20-6-14	160.00
533	Long	SE/4 36-5-14	160.00
574	Ralstin	E/2 14 and Lots 1 and 2 of 11-6-14	402.78
575	Ralstin	NW/4 23-6-14	160.00
576	Ralstin	SE/4 23-6-14	160.00
577	Ralstin	NE/4 23-6-14	160.00
578	Mueller	SE/4 24-6-14	160.00
692	Phillips	NE/4 20-6-14	160.00
707	Thrall	S/2 SW/4 22-6-14	80.00
708	Thrall	NW/4 and E/2 22-6-14	478.50
709	Thrall	N/2 SW/4 22-6-14	80.00
731	Fitzgerald	All 17-6-14	640.00
826	Dulabahn	SE/4 13-6-14	160.00
897	Blackmer	N/2 15-6-15	320.00
898	Sharp & Co.	SW/4 15-6-15	160.00
899	Voiles	SE/4 15-6-15	160.00
904	Dulabahn	NW/4 21-6-15	160.00
905	Haddock	NE/4 21-6-15	160.00
906	Miller	SW/4 21-6-15	160.00
907	Dulabahn	SE/4 21-6-15	160.00
908	Parkes	SW/4 20-6-15	160.00
909	Parkes	SE/4 20-6-15	159.50
910	Jones	NW/4 29-6-15	160.00
911	Michael	NE/4 29-6-15	160.00
912	Lewis	N/2 17-6-15	320.00
913	Sylvis	NE/4 16-6-15	160.00
914	Blackmer	SE/4 18-6-15	160.00
915	Blackmer	SW/4 17-6-15	160.00

[fol. 1244-28]

Lease No.	Name	Description	Acreage
816	Wilson	SW/4 16-6-15	160.00
917	Metcalf	SE/4 16-6-15	160.00
918	White	W/2 30-6-15	314.32
919	Gribble	E/2 30-6-15	320.00
927	Ferguson	Sec. 14 and 23-6-16	1,280.00
929	Ebersole	Sec. 24-6-16	640.00
934	DeHardt	SE/4 31-6-14	160.00
935	Langley	W/2 14-6-14	320.00
936	Alliance Life Ins.	N/2 N/2 31-6-15	160.00
939	Mueller	NW/4 24-6-14	160.00
944	Pennock	SE/4 30-6-16	160.00
957	Jackson	NW/4 16-6-15	160.00
969	Wilson	SW/4 22-6-16	160.00
975	Gibbons	SE/4 34-6-14	160.00
980	Allen	SE/4 26-6-16	160.00
984	Kirven	W/2 26-6-14	320.00
986	Marshman	SE/4 26-6-14	160.00
989	Hampsten	NW/4 13-6-16	160.00
1006	Thrall	NE/4 26-6-14	160.00
1091	Johnson	SW/4 NE/4 and N/2 NE/4 13-6-14	120.00
1092	Johnson	SE/4 NE/4 13 and Lots 1 and 2 of 12-6-14	127.00
1097	Weeks	NW/4 31 and SE/4 30-6-14	320.00
1098	Burk	SW/4 31-6-14	160.00
1104	Hinds	SW/4 34-6-14	160.00
1105	Hinds	NW/4 34-6-14	160.00
1106	Parker	NE/4 18-6-15	160.00
1107	Wiegel	Lots 1, 2, 3 and 4, Sec. 7-6-16 and Lot 1 of 12-6-15	158.88
1108	Wiegel	NE/4 18-6-16	160.00
1113	Weeks	N/2 30-6-14	320.00
1115	McGrath	Sec. 3 and N/2 N/2 and SE/4 NW/4 and NE/4 SW/4 and NW/4 SE/4 and SW/4 NE/4 10-3-15	959.92
1119	Adams	SW/4 3-5-16 and S/2 34-6-16	480.00
1120	Adams	E/2 3-5-16	319.73
1126	Republic Natural	Lots 1, 2, 3 and 4, Sec. 12-6-16	130.83
1127	Muller	NE/4 13-6-16	160.00
1128	Muller	SW/4 13-6-16	160.00
1155	Curtis	NW/4 16-6-16	160.00
1157	Cope	Lots 1 and 2 and E/2 NW/4 18-6-16	155.12
1158	Cope	SE/4 18-6-16	160.00
1159	Shields	N/2 36-5-14	320.00
1163	Republic Natural	Lots 3 and 4, Sec. 9-6-16	57.47
1323	Wiggins	All 1-2-14	640.00
1324	Wiggins	N/2 and N/2 S/2 2-2-14 and NW/4 10-2-14	640.00
1325	Hyer	SE/4 12-2-14	160.00
1326	Gilek	NE/4 12-2-14	160.00
1329	Griffin	SW/4 12-2-14	160.00
1342	Rahm	E/2 22-6-16	320.00
1351	Hampsten	SE/4 13-6-16	160.00
1353	Kammerer	NE/4 34-6-16	160.00
1402	Hurliman	W/2 SW/4; SE/4 SW/4; SW/4 NW/4; S/2 SE/4; NE/4 SE/4; SE/4 NE/4 10-3-15	320.00

[fol. 1244-29]

Lease No.	Name	Description	Acreage
1403	Quinn	SE/4 25-4-14	160.00
1432	Wilson	NW/4 22-6-16	160.00
1519	McGarraugh	S/2 SW/4; NW/4 SW/4; SW/4 NW/4 32-6-15	160.00
1521	Brown	SE/4 NE/4; NE/4 SE/4 and S/2 SE/4 32-6-15	160.00
1528	Frankhouser	S/2 and NW/4 27-6-15	480.00
1530	Gribble	SE/4 and S/2NE /4 and SE/4 NW/4; NE/4 SW/4 31-6-15	320.00
1532	Blackwelder	SW/4 30-5-16	160.00
1533	Burdge	W/2 and NE/4 20-6-16	480.00
1534	Swenson	NE/4 30-6-16	160.00
1535	Parker	SE/4 20-6-16	160.00
1536	Witt	NE/4 32-6-16	160.00
1537	Witt	S/2 29-6-16	320.00
1538	Shockley	NW/4 29-6-16	160.00
1540	Pittman	Pt. NE/4 29-6-16	155.00
1542	Kenoyer	E/2 19-6-16	320.00
1543	Judd	SW/4 19-6-16	155.95
1551	Gribble	W/2 NW/4; S/2 SE/4 NW/4 1-5-14	100.00
1556	Sutton	SE/4 12-5-14	160.00
1584	Adams	NW/4 3-5-16	159.39
1595	Sutton	SW/4 1 and NE/4 12-5-14	319.00
1603	Sylvis	NW/4 19-6-16	155.65
1608	Bartels	NE/4 25-4-14	160.00
1611	State of Oklahoma	SE/4 17-6-15	160.00
1658-B	Magnolia Pet Co.	Lot 2, 12-6-15	26.17
1685	Allen	NE/4 and SW/4 26-6-16	320.00
1699	Jackson	Lots 1 and 2 of 8 and Lot 2 of 9-6-15	148.53
1703	Rich	NE/4 1-4-14	140.00
1705	Lutz	S/2 SW/4; NW/4 SW/4 and SW/4 NW/4 31-6-15	160.00
1706	Michael	SW/4 22-6-15	160.00
1707	Easterwood	All 35-4-14	640.00
1708	Easterwood	SW/4 25-4-14	160.00
1714	Langston	N. 100 Ac. SW/4 32-6-16	100.00
1717	O'Brien	S. 60 Ac. SW/4 32-6-16	60.00
1728	Bartels	NW/4 25-4-14	160.00
1729	Lightner	SE/4 1-4-14	160.00
1732	Gribble, Admin.	NE/4 1-5-14	160.00
1733	Enz	NW/4 12-5-14	160.00
1735	Swinger	SE/4 32-6-16	160.00
1738	Shields	All 25-5-14 (Except ROW)	622.00
1741	B. M. & E. R.R.	S. 50 Ft. N/2 and N. 50 Ft. S/2 25-5-14	12.00
1742	Tr. Eula Christian	SW corner SW/4 25-5-14	6.00
1743	Callahan	SE/4 22-6-15	160.00
1745	McGarraugh	SW/4 12-5-14	160.00
1752	Nordberg, Tr.	NE/4 27-6-15	160.00
1761	Federal Land Bank	All 24-5-14	640.00
1764	Sch. Dist. No. 86	NE corner Sec. 29-6-16	3.00
1765	Wheeler	SW/4 NE/4; NW/4 SE/4; NE/4 SW/4 and SE/4 NW/4 32-6-15	160.00
1768	Kelly	Lots 1 and 2 of 9-6-16	58.79
1772	Callahan	N/2 N/2 32-6-15	160.00
1795	Shockley	NW/4 34-6-16	160.00

[fol. 1244-30]

Lease No.	Name	Description	Acreage
1803	Sch. Dist. No. 143	1 Ac. in SE corner SE/4 12-5-14	1.00
1808	Ryan	SW/4 30 and NE/4 31-6-14	320.00
1809	Bauder	SE/4 1-5-14	160.00
1836	Simmons	NW/4 22-6-15	160.00
1838	Langston	NW/4 32-6-16	160.00
1843	Gex	SE/4 36-6-14	160.00
1846	Witt	NW/4 30-6-16	160.00
1853	Gardner	NW/4 12-2-14	160.00
1863	Hinds	NE/4 34-6-14	160.00
1870	Comm. of Land Office	NE/4 and W/2 36-6-14	480.00
1894	United States	NW/4 26-6-16	160.00
1964	State of Oklahoma	All 36-6-13	640.00
1982	Stephens	N. 60 Ac. of E/2 of NW/4 1-5-14	60.00
1986	Dale	Lot 1, Sec. 9-6-15	51.13
		Sub-Total	35,137.75

UNDEVELOPED ACREAGE

152	Langley	SE/4 15-6-14	160.00
198	Hinds	NE/4 33-6-14	160.00
274	Blackmer	SW/4 25-6-14	160.00
293	Isham	SW/4 26-6-15	160.00
310	Ferris	NW/4 33-6-15	160.00
320	Phillips	SE/4 18; Lots 1 and 2 7-6-14	225.60
322	Phillips	SW/4 19-6-15	157.20
494	Ewing	NW/4 20-6-14	160.00
529	Metcalf	NE/4 27-6-16	160.00
703	Thrall	SW/4 35-6-14	160.00
894	Blake	E/2 34-6-15	320.00
903	Langley	SE/4 28-6-14	160.00
922	Ferk	W/2 SW/4 29-6-15	80.00
923	Ferk	E/2 SE/4 29-6-15	40.00
925	Central Nat'l Bank	E/2 6-5-16	320.00
928	Ebersole	N/2 25-6-16	320.00
931	Brixey	W/2 and SE/4 33-6-14	480.00
932	Phillips	SW/4 28-6-14	160.00
933	Miller	NW/4 18-6-14	160.00
942	Dain	SW/4 and SE/4 16-6-14	320.00
950	Purcell	SE/4 5-5-14	160.00
964	Witt	S/2 31-6-16	320.00
992	Colvin	SE/4 26-6-13	160.00
997	Ferk	W/2 SE/4 and E/2 SW/4 29-6-15	160.00
1003	Blackmer	SW/4 28-6-17	160.00
1004	Hoobler	Lots 1 and 2 of 8; N/2 NE/4 17-6-17	150.84
1005	Hampsten	NE/4 30-6-17	158.00
1007	Hiller	W/2 6-5-14	320.00
1008	Neville	SW/4 8-5-14	160.00
1009	Mahan	SE/4 7-5-14	160.00
1010	Brock	NE/4 13-6-13	160.00
1011	Howard	SE/4 24-6-13	160.00
1012	Weeden	NW/4 15-6-14	160.00
1013	Belford	SW/4 19-6-14	160.00
1014	Brixey	NW/4 35-6-14	160.00
1017	Langhofer	NW/4 33-5-13	160.00
1018	Stewart	SW/4 15-5-13	160.00

[fol. 1244-31]

Lease No.	Name	Description	Acreage
1019	Johnson	NE/4 5-5-14	160.00
1020	Kan. City Lf. Ins. Co.	SE/4 25-5-13	160.00
1021	Lewis	SE/4 24-5-13	160.00
1022	Hiller	N/2 13-5-13	320.00
1023	Hiller	SE/4 12-5-13	160.00
1024	Frysinger	NW/4 1-5-13	160.00
1025	Bacon	SE/4 SW/4 5-5-14	40.00
1029	McDaniel	NE/4 4-5-13	160.26
1033	Shattuck	W/2 and NE/4 10 and NE/4 9-5-13	640.00
1034	Blake	N/2 and SE/4 11-5-13	480.00
1035	Burk	W/2 12-5-13	320.00
1036	Ferguson	SW/4 13 and N/2 and SE/4 14-5-13	640.00
1037	Gloden	SW/4 14-5-13	160.00
1038	Wilson	N/2 15-5-13	320.00
1039	Langston	SE/4 SW/4 29-5-13	40.00
1040	Cities Service Oil Co.	All 31-5-13	640.00
1041	Cities Service Oil Co.	All 32-5-13	640.00
1042	Lunsford	S/2 34 and NW/4 35-5-13	480.00
1043	Gloden	E/2 35; SE/4 and S/2 SW/4 26-5-13	560.00
1044	Brickett	NW/4 5-5-14	160.00
1045	Republic Natural	N/2 SW/4 5-5-14	80.00
1046	Renfrew	SW/4 SW/4 5; SE/4 SE/4 6; N/2 NW/4 and NE/4 8-5-14	320.00
1047	Burk	NW/4 7-5-14	160.00
1052	Evans	NW/4 3-4-13	160.00
1053	Cities Service Oil Co.	W/2 4 and S/2 3-4-13	640.00
1054	Cities Service Oil Co.	All 5-4-13	640.00
1055	Cities Service Oil Co.	N/2 and SE/4 6-4-13	480.00
1056	Broce	NW/4 8-4-13	160.00
1057	Rizley	SW/4 9-4-13	160.00
1058	Inter-State Cattle Co.	NE/4 and SW/4 8-4-13	320.00
1059	Cities Service Oil Co.	N/2 and SE/4 9-4-13	480.00
1060	Cities Service Oil Co.	All 10-4-13	640.00
1066	Julian	NW/4 3-5-13	160.00
1067	Julian	S/2 3 and S/2 4-5-13	640.00
1068	Langston	NW/4 4-5-13	160.00
1069	Blauser	SW/4 16-5-13	160.00
1070	Taylor	NE/4 17-5-13	160.00
1071	Hiser	SE/4 17 and SW/4 22-5-13	320.00
1072	Hinds	SE/4 20-5-13	160.00
1073	Langston	SE/4 2[illegible]-5-13	160.00
1074	Cameron	SW/4 2[illegible]-5-13	160.00
1075	Staton	N/2 25-5-13	320.00
1076	Blake	NW/4 27-5-13	160.00
1077	Mitchell	N/2 28-5-13	313.42
1078	Hinds	NE/4 29-5-13	160.00
1079	Miller	S/2 18-5-14	320.00
1080	Marvel	N/2 19-5-14	320.00
1082	Norton	SW/4 13-6-13	160.00
1085	Weeks	E/2 23-6-13	320.00
1086	Weeks	SW/4 24-6-13	160.00
1087	Weeks	NW/4 24-6-13	160.00
1088	Weeks	All 25-6-13	640.00
1090	Jeffrey	SW/4 35 and SE/4 34-6-13	320.00
1093	Weeden	Lots 1 and 2 of 9; Lots 1 and 2 of 10-6-14	160.00

[fol. 1244-32]

Lease No.	Name	Description	Acreage
1094	Beer	NE/4 19-6-14	160.00
1095	Brickett	NE/4 27-6-14	160.00
1096	Beer	NW/4 28-6-14	160.00
1099	Hennes	NW/4 20-5-13	160.00
1100	Landess	S/2 28-5-13	320.00
1101	Sparks	SE/4 33-5-13	160.00
1103	Clinkingbeard	SE/4 and SW/4 32-6-14	320.00
1109	DeLong	NE/4 26-5-13	160.00
1110	Clinkingbeard	SE/4 15-5-13	160.00
1111	Clinkingbeard	NE/4 22-5-13	160.00
1112	Young	N/2 SE/4 and SW/4 SE/4 22-5-13	120.00
1121	Blackmer	SW/4 25-6-16	160.00
1122	Hollman	NW/4 36-6-16	160.00
1123	Purcell	E/2 36-6-16	320.00
1124	Jackson	S/2 18-6-17	320.00
1125	Towner	Lots 1, 2 and 3 of 7; Lots 3 and 4 of 8 and E/2 19-6-17	492.00
1126	Republic Natural	Lot 4 of 7-6-17	34.28
1146	Alliance Life Ins.	NE/4 32-6-17	160.00
1154	Hill	SE/4 32-6-17	160.00
1156	Franey	NW/4 17-6-16	160.00
1161	Wilson	SW/4 21-6-17	160.00
1162	Swinger	SW/4 18-6-14	160.00
1163	Republic Natural	Lots 1, 2, 3 and 4 of 8-6-16	111.68
1164	Republic Natural	NW/4 35-6-15	160.00
1166	Republic Natural	Lots 1, 2, 3 and 4 of 9-6-17	145.76
1187	Olney	NW/4 29-6-17	160.00
1190	Swinger	NE/4 5-5-16	160.00
1196	Bauman	NE/4 18-5-14	160.00
1198	Cope	SW/4 17-6-16	160.00
1203	Witt	SE/4 SE/4 22; SW/4 23 and W/2 NW/4 26-5-13	280.00
1206	Lunsford	SW/4 23-6-13	160.00
1245	Republic Natural	NE/4 7-5-14	160.00
1255	Clark	NE/4 3-4-13	160.00
1256	Fitzgerald	NE/4 18-6-14	160.00
1269	Swenson	SW/4 11-5-13	160.00
1322	Weeks	NE/4 1-5-13	160.02
1331	Blake	SW/4 27-5-13	160.00
1332	Blake	SE/4 27 and NW/4 34-5-13	320.00
1339	Long	SE/4 21-6-14	160.00
1343	Smith	S/2 16-6-17	320.00
1344	Daniels	SW/4 20-6-17	160.00
1345	Hoobler	N/2 20-6-17	320.00
1346	State of Oklahoma	N/2 21-6-17	320.00
1347	Cline	SW/4 29-6-17	160.00
1348	Mahnken	SE/4 29-6-17	160.00
1349	Williams	NE/4 29-6-17	160.00
1350	Muller	SE/4 30-6-17	160.00
1352	Rahm	SE/4 27-6-16	160.00
1354	Baxter	SE/4 35-6-16	160.00
1355	Daniels	NW/4 17-6-17	160.00
1356	Hoobler	SW/4 NE/4 17-6-17	40.00
1357	Towner	NE/4 18-6-17	160.00
1358	State of Oklahoma	NW/4 19-6-17	160.00
1359	McAdam	SE/4 28-6-17	160.00

[fol. 1244–33]

Lease No.	Name	Description	Acreage
1362	Swinger	NE/4 24-6-13	160.00
1380	Hamson	NW/4 22-5-13	160.00
1384	Alliance Life Ins.	SW/4 34-6-13	160.00
1385	Dixon	NE/4 23 and NW/4 24-5-13	320.00
1387	Prudential Ins. Co.	S/2 1-5-13	320.00
1392	Winkelmann	NW/4 27-6-14	160.00
1393	Lathrop	E/2 NW/4 and NE/4 34-6-13	240.00
1395	Nelson	NW/4 35-6-13	160.00
1431	Shiblum	NW/4 23-5-13	160.00
1434	Dulabahn	NW/4 28-6-15	160.00
1435	Dulabahn	NE/4 28-6-15	160.00
1500	Williams	SW/4 34-6-15	160.00
1518	Clark	S/2 NE/4 26-6-15	80.00
1520	Hampsten	NE/4 23-6-15	160.00
1522	Powell	SW/4 23 and N/2 NE/4 26-6-15	240.00
1523	Powell	NW/4 24-6-15	160.00
1524	Simmons	NW/4 23-6-15	160.00
1525	Miller	SW/4 35-6-15	160.00
1526	Brawner	SE/4 33-6-15	160.00
1527	Isham	SE/4 26-6-15	160.00
1528	Frankhouser	NE/4 33-6-15	160.00
1529	Blackmer	SE/4 28-6-15	160.00
1531	Powell	NE/4 25-6-15	160.00
1536	Witt	W/2 33-6-16	320.00
1537	Witt	NE/4 31-6-16	160.00
1539	Sledge	E/2 17-6-16	320.00
1541	Hollman	W/2 21 and W/2 28-6-16	640.00
1545	Lolmaugh	S/2 and NW/4 5-5-16	480.00
1552	Allen	SE/4 32-5-14	160.00
1560	Foran	NE/4 26-6-13	160.00
1571	Bergstedt	SW/4 33-6-15	160.00
1574	Kennedy	SW/4 25 and NE/4 35-6-15	320.00
1579	Hamilton	SE/4 21-6-16	160.00
1583	Dixon	SE/4 30-5-14	160.00
1589	Tantlinger	SW/4 6-5-16	160.00
1592	Kennedy	NW/4 36-6-15	160.00
1593	Booher	NE/4 12-5-13	158.00
1596	Morrison	SE/4 28-6-16	160.00
1602	Shipton	SE/4 NE/4 17-6-17	40.00
1609	Winter	SW/4 2-5-13	160.00
1658	Farrar	Lot 2 of 12-6-15	52.35
1662	Stevens	Lot 1 of 10 and All of 11-6-16	156.00
1670	Herald	NE/4 35-6-16	160.00
1671	Russell	SE/4 25-6-16	160.00
1672	Herald	SW/4 32-6-17	160.00
1674	Hampsten	Lots 3 and 4 and E/2 SW/4 19-6-17	160.00
1679	Byram	N/2 SW/4 and E/2 NW/4 26-5-13	160.00
1689	Beard	SE/4 13-6-13	160.00
1690	Vantine	SE/4 32-6-13	160.00
1711	Johnson	NW/4 31-6-16	160.00
1721	McBratney	SE/4 8-5-14	160.00
1726	Witt	SW/4 36-6-15	160.00
1731	Witt	NE/4 36-6-15	160.00
1736	Swaim	SE/4 36-6-15	160.00
1737	Shockley	S/2 NE/4 21-6-16	80.00
1739	Wilson	NE/4 6-5-14	160.00

[fol. 1244-34]

Lease No.	Name	Description	Acreage
1740	Hofbeck	SE/4 35-6-15	160.00
1744	Wacker	S/2 NW/4 8-5-14	80.00
1746	Mackay	NW/4 6-5-16	160.00
1751	Custer	NW/4 18-6-17	160.00
1768	Kelly	Lots 3 and 4 of 10-6-16	60.21
1796	Isham	NW/4 26-6-15	160.00
1797	Hoobler	SE/4 17-6-17	160.00
1799	Wilson	NW/4 28-6-17	160.00
1801	Heller	NE/4 15-6-16	160.00
1805	Carroll	NW/4 27-6-16	160.00
1806	Carroll	W/2 15-6-16	320.00
1807	Grewell	NE/4 13-6-15	160.00
1810	Hoobler	SE/4 20-6-17	160.00
1812	Carpenter	W/2 and NE/4 and SE/4 8-5-16	640.00
1813	Kruse	NE/4 21-6-14	160.00
1814	Robinson	NE/4 29-6-14	160.00
1815	Brixey	SW/4 27-6-14	160.00
1816	Beer	W/2 and SE/4 20-5-14	480.00
1817	Gloden	SW/4 25 and All 36-5-13	800.00
1818	White	SW/4 17-5-14	160.00
1819	Briggeman	SE/4 21-6-17	160.00
1820	McBratney	NE/4 17-5-14	159.00
1821	Fischer	W/2 29-6-14	320.00
1822	Booher	SE/4 29-6-14	160.00
1823	Wright	NE/4 28-6-14	160.00
1824	Clauson	NE/4 20-5-14	160.00
1825	Wright	NW/4 17-5-14	160.00
1826	Weeden	NE/4 and SW/4 15 and NE/4 16-6-14	480.00
1827	White	NW/4 18-5-14	160.00
1828	United Prod. Co.	SE/4 17-5-14	160.00
1832	Wallace	SE/4 31-6-17	160.00
1833	Witt	SE/4 33-6-16	160.00
1834	Muller	NW/4 31-6-17	160.00
1835	Beach	NW/4 35-6-16	160.00
1837	Couch	SE/4 27-6-14	160.00
1839	Witt	NE/4 28-6-16	160.00
1840	Decker	SE/4 25-6-15	160.00
1841	Allen	SE/4 19-6-14	160.00
1842	Witt	SW/4 28-6-15	160.00
1844	Hampsten	NW/4 30-6-17	162.11
1845	Russell	SE/4 15 and N/2 NE/4 21-6-16	240.00
1847	Cone	NW/4 34-6-15	160.00
1848	Denman	NW/4 13-6-15	160.00
1849	Guest	NE/4 33-6-16	160.00
1850	Adams	SW/4 27-6-16	160.00
1852	Adams	SW/4 36-6-16	160.00
1859	Church of United Brethren	E/2 NE/4 NE/4 SE/4 25-6-14	5.00
1861	Mueller	NE/4 25-6-14	160.00
1864	Shockley	SW/4 35-6-16	160.00
1866	Duncan	SW/4 17-6-17	160.00
1892	Gum	N/2 SE/4 and SW/4 SE/4 6-5-14	120.00
1893	Atkins	SE/4 13-5-13	160.00
1914	Townsend	S/2 NE/4 3-5-13	80.00
1917	Muller	SW/4 31-6-17	160.24
1918	Miller	NW/4 2-5-13	160.00

[fol. 1244–35]

Lease No.	Name	Description	Acreage
1919	McDaniel	SW/4 31-5-14	160.08
1920	Lunsford	NE/4 34-5-13	160.00
1921	B. M. & E. R. R. Co.	13.40 Ac. in 29-5-14	13.40
1922	Edens	N/2 NW/4 and SE/4 NW/4 29-5-14	120.00
1923	Markham	E/2 29-5-14	314.00
1924	Wessler	SW/4 29-5-14	160.00
1925	Albers	NW/4 32-5-14	160.00
1926	Schmelzel	NE/4 16-6-17	160.00
1927	Talbot	N/2 NE/4; SW/4 NE/4 and NW/4 SE/4 2-5-13	160.00
1928	Henning	NE/4 32-5-14	160.00
1929	Alliance Life Ins.	NW/4 31-5-14	160.00
1931	Curtis	SW/4 32-5-14	160.00
1932	Burk	SW/4 7-5-14	160.00
1945	Stephens	NE/4 24-5-13	160.00
1946	Alliance Life Ins.	SE/4 10-5-13	160.00
1947	Talbot	S/2 SE/4; NE/4 SE/4 and SE/4 NE/4 2-5-13	160.00
1948	Nelson	N/2 NE/4 3-5-13	80.00
1951	Norton	SE/4 14-6-13	160.00
1953	Collins	NE/4 SW/4 and SW/4 SW/4 29-5-13.	80.00
1958	Conroy	NW/4 32-6-14	160.00
1959	Nelson	All Secs. 11, 12 and NW/4 14-6-13	260.00
1960	Nelson	W/2 26-6-13	320.00
1961	Nelson	NE/4 14-6-13	160.00
1962	Nelson	SW/4 14-6-13	160.00
1963	State of Oklahoma	NW/4 16-6-14	160.00
1965	State of Oklahoma	NE/4 32-6-14	160.00
1966	Albers	S/2 NE/4 and NE/4 NE/4 31-5-14	120.00
1967	Lewis	NW/4 30-5-14	160.00
1968	Henning	NE/4 30-5-14	160.00
1969	Henning	SW/4 19-5-14	160.00
1970	Mo. Valley College	SE/4 19-5-14	160.00
1971	Curtis	SE/4 31-5-14	160.00
1972	B. M. & E. R. R. Co.	Pt. of NE/4 30-5-14	7.24
1973	Dixon	NW/4 NE/4 31-5-14	40.00
1974	Gribble	NW/4 25-6-14	160.00
1975	Davis	SE/4 25-6-14	155.00
1976	Croak	NE/4 35-6-14	160.00
1977	Andrews	SE/4 35-6-14	160.00
1978	Ewing	SW/4 20-6-14	160.00
1979	Ewing	NW/4 23-6-13	160.00
1984	Spencer	NE/4 35-6-13	160.00
1985	Spencer	SE/4 35-6-13	103.04
1986	Dale	Lots 1 and 2 of 10-6-15	320.00
1987	Royse	NE/4 31 and NW/4 32-6-17	160.00
1988	Jacobs	SW/4 30-6-17	80.00
1989	Kruse	E/2 NE/4 28-6-17	80.00
1990	Wilson	W/2 NE/4 28-6-17	80.00
		Sub-Total	61,354.73
		Grand Total	96,492.48

[fol. 1245] EXHIBIT 73—Due to error in marking of exhibits the number "73" was omitted and no exhibit marked, offered or admitted as Exhibit 73.

fol. 1246-1249]

EXHIBIT No. 74

Guymon Hugoton Field

First 7 months of 1946

Average Price

	4¢ gas	4½¢ gas	5¢ gas	Total Gas
Cabot Co.	2,667,094M	1,035,108M	4,321,547N	8,023,749M
G. S. Gas Co.	21,672,972M	.....	.....	21,672,972
P. P. Co.	4,144,082	.....	.....	4,144,082
Sd PS Co.	413,471	.....	.....	413,741
Skelly	5,775,643	.....	.....	5,775,643
Republic	7,223,490	3,155,090	.....	10,378,580
	418,970,022M	4,190,198M	4,321,547M	50,408,767M

Average Price

41,897,022M	@ 4¢	.....	$1,675,880.88	83.1
4,190,198	@ 4½¢	.....	188,588.91	8.3
4,321,547	@ 5¢	.....	216,077.35	8.6
50,408,767M	4.12729¢		2,080,517.14	100.0%

E. Weinberger
Exhibit 74
Official Reporter

[fol. 1250] EXHIBIT No. 76

Commercial Telegram

Date April 30, 1946.

Signed by Joe Rolston, Jr. Time 1:30 P. M. Steno GH. Company Cities Service Gas Co. Dept. Legal. No. Words 220.

Night Letter

Petroleum Branch, Office of Price Administration, Washington, D. C.

Attention: P. A. McKenna

In accordance with our telephone conversation of April 29th please wire collect answers to following questions under revised maximum price regulation 436 and amendments thereto under emergency price control act as pertains to sale of dry gas in Hugoton Field, Texas County, Oklahoma: L. Maximum price chargeable by seller for deliveries of dry wellhead gas for industrial and domestic

use; 2. Maximum price chargeable for deliveries of dry wellhead gas where seller had contracts for sale of dry gas in effect on May first 1942; 3. Same as 2 where seller did not have contracts in effect for sale of dry gas on May first 1942; 4. Does act or regulations grant any exceptions whereby state governmental agency is authorized to fix wellhead or field price of dry gas for industrial and domestic use above level of going or prevailing price for such gas? Will contracts for sale of dry wellhead gas for industrial and domestic use be approved where price for such gas is above prevailing or going price therefor? 6. What do your records disclose ask going, or prevailing, price of dry wellhead or field gas for such field? Full information urgent for case set May sixth for compulsory purchase of dry gas at what we deem to be above going or field price therefor.

Joe Rolston, Jr., Attorney for Cities Service Gas Company, First National Building, Oklahoma City, Okla.

[fol. 1251] EXHIBIT No. 77

Western Union

D. WB 582 387 1/162 NL Collect—Washington DC. 2

1946 May 3 AM 1 06.

Joe Rolston, First National Bank Bldg., Cities Services Gas Co., Oklahoma City

Re Tel April 30, Maximum price approved by this office for sales of dry wellhead gas to pipe lines from Hugoton Field, Texas County, Oklahoma, four cents per M. C. F. where contract for sale of dry gas was in effect on May 1, 1942, sellers maximum price to the same purchaser for deliveries of dry gas produced from the same source or sources as the dry gas covered by the contract shall not exceed the price that could be charged for such deliveries under the terms of the contract that was in effect on May 1, 1942. Where seller did not have contract in effect for sale of dry gas on May 1, 1942, he should file with this office pursuant to Section 15 (D) of revised maximum price regulation 426 and this office will approve or establish maximum price for this sale not to exceed the general

level of prices in the area for sellers and purchasers of the same class. No act—End sheet one

[fol. 1252] EXHIBIT 78

Western Union

D. WB 582 2/1 60— 1946 May 3 AM 1 06.

or regulation of the office of price administration grants any exceptions whereby state governmental agency is authorized to fix wellhead or field price of dry gas for industrial and domestic use above the level of going or prevailing price for such gas. Contracts for sale of dry wellhead gas for industrial and domestic use if price is above the prevailing or going price may be filed pursuant to section 8 (C) of revised maximum price regulation 436 which provides that the office of price administration may approve such price if (1) there exist or threatens to exist in a particular locality a shortage in the supply of gas which aids directly in the war program or is essential to a standard of living concistant to the prosecution of the war. (2) That such local shortage will be substantially reduced or eliminated by adjustment of the maximum price of such seller and of like sellers for such gas: (3) that such adjustment—End sheet two

[fol. 1253] EXHIBIT No. 79

Western Union

D.WB 582 3165 1946 May 3 AM 1 06

Will not create or tend to create a shortage or a need for an increase of prices in another locality and will effectuate the purposes of the Emergency Price Control Act of 1942 as amended. Our records indicate that the going or prevailing price of dry wellhead gas sold to pipe line companies in the Hugoton Field, Texas County, Oklahoma is four cents per M. C. F.

P. A. McKenna Petroleum Branch.

30 1 1942 1 1942 1 1942 15 (C) 8 (c) (1) (2) (3) MCF.

[fol. 1254] EXHIBIT 80

OFFICE OF PRICE ADMINISTRATION

(Document No. 52646)

Part 1340—Fuel

(RMPR 436, Incl. Amdts. 1-22)

Crude Petroleum and Natural and Petroleum Gas

This compilation of Revised Maximum Price Regulation 436 includes Amendment 22, effective March 1, 1946. The text added by Amendment 22 is underscored.

In the judgment of the Price Administrator, the maximum prices established by this regulation are and will be generally fair and equitable and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended, and Executive Order Nos. 9250 and 9328. Such specifications and standards as are used in this regulation were, prior to such use, in general use in the trade or industry affected. A statement of the considerations involved in the issuance of this regulation, issued simultaneously herewith, has been filed with the Division of the Federal Register."

§1340.165 Maximum prices for crude petroleum, and natural and Petroleum gas. Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942 as amended, and Executive Order Nos. 9250 and 9328 Revised Maximum Price Regulation No. 436 (Crude Petroleum, and Natural and Petroleum Gas), which is annexed hereto and made a part hereof, is hereby issued.

[fol. 1255] Article 1—General Provisions

Sec.

1. Sales of petroleum, and natural and petroleum gas at higher than maximum prices prohibited.
2. To what transactions and persons this regulation is applicable.
3. Adjustable pricing.
4. Prior orders.
5. Evasion.
6. Transfers of business or stock in trade.

7. Licensing, applicability of the registration and licensing provisions of the General Maximum Price Regulation.
8. Petitions for amendment and applications for adjustment.
9. Definitions.

Article II—Maximum Prices for Crude Petroleum

10. Specific prices.
11. Formula for determining maximum prices.
12. Increases to maximum prices.

Article III—Maximum Prices for Natural and Petroleum Gas

13. Specific prices.
14. Formula for determining maximum prices—Wet gas.
15. Formula for determining maximum prices—Dry gas.

[fol. 1256] Authority: § 1340.165 issued under 56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383. 78th Cong; E. O. 9250, 7 F. R. 7871; E. O. 9328; 8 F. R. 4681; E. O. 9599, 10 F. R. 10155; E. O. 9651, 10 F. R. 13487.

Article I—General Provisions

Section 1.[1] Sales of petroleum and natural and petroleum gas at higher than maximum prices prohibited. (a) On and after June 7, 1944, regardless of any contract or obligation no person shall sell or deliver and no person shall buy or receive in the course of trade or business any crude petroleum, or natural and petroleum gas covered by this regulation at prices higher than the maximum prices fixed by this regulation, and no person shall agree, offer, or attempt to do any of these things.

(b) Prices lower than the maximum prices may, of course, be charged and paid.

Sec. 2. To what transactions and persons this regulation is applicable. This regulation covers all sales and

[1] 10 F. R. 1370.

[2] Statements of considerations are also issued simultaneous with amendments. Copies may be obtained from the Office of Price Administration.

deliveries of crude petroleum and natural and petroleum gas either by producers, sellers, refiners or by any other [fol. 1257] person except;

(a) Crude petroleum when sold to a processor as gas enrichment oil;

(b) Crude petroleum transported through the War Emergency Pipelines System and sold by Defense Supplies Corporation at the terminal;

(c) Crude petroleum when sold to a consumer for a purpose other than the production of more than one petroleum fraction; or

(d) Crude petroleum when sold to a tank wagon reseller by sellers, other than crude oil producers, for resale to a consumer for a purpose other than the production of more than one petroleum fraction therefrom.

Provided, however, This regulation shall in all cases be applicable to sales of crude petroleum to a refiner or to a person using such crude petroleum in oil and gas field operations.

Nothing in this price regulation shall be construed to authorize the regulation of a rate that is exempt from control by the Office of Price Administration under the Emergency Price Control Act of 1942, as amended,

Sec. 2 amended by Am. 5, 9 F. R. 11904, effective 10-3-44).

Sec. 3. Adjustable Pricing. Any person may agree to sell at a price which can be increased up to the maximum price in effect at the time of delivery.

[fol. 1258] Where a petition for adjustment or amendment is pending, the buyer and seller may agree that prices for deliveries made during the pendency of the petition shall be determined in accordance with the disposition of the petition. Such change in prices will be allowed if the deliveries are necessary to promote distribution or production and if it will not interfere with the purposes of the Emergency Price Control Act of 1942, as amended.

Sec. 4. Prior Orders. (a) Orders of adjustment Nos. 1, 2, 3, 4, 5 and 6 were issued pursuant to Maximum Price Regulation No. 436. Sellers affected by such orders may notwithstanding the other provisions of this regulation charge the maximum prices authorized by such orders.

Sec. 5. Evasion. (a) The price limitations set forth in this regulation shall not be evaded whether by direct or indirect methods in connection with a purchase, sale, delivery or transfer of crude petroleum alone or in conjunction with any other materials, or by way of any commission, service, transportation, or other charge, or discount, premium or other privilege, or by typing-agreement or other trade understanding or by a change in the quality of a product, or otherwise.

[fol. 1259] Sec. 6. Transfers of Business or Stock in Trade. (a) If the business, assets or stock in trade of any seller or any person as defined in section 9 (c) are sold or otherwise transferred after October 15, 1941, the maximum prices of the transferee shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records and make reports shall be the same. The transferor shall either preserve and make available, or turn over to the transferee all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the records and reports provisions of this regulation and amendments thereto.

Sec. 7. Licensing, Applicability of the Registration and Licensing Provisions of the General Maximum Price Regulation. (a) The registration and licensing provisions of §§ 1499.15 and 1499.16 of the General Maximum Price Regulation 3 are applicable to every person subject to this regulation selling at wholesale or retail any petroleum covered by this regulation. When used in this section the terms "selling at wholesale" and "selling at retail" have the definitions given them by §§ 1499.20 (p) and 1499.20 (o) respectively of the General Maximum Price Regulation. Said registration and licensing provisions became effective as to person selling at wholesale on May 11, 1942, and as to persons selling at retail on May 18, 1942.

[fol. 1260] Sec. 8. Petitions for Amendment and Applications for Adjustment—(a) Petitions for Amendment. Any person seeking an amendment of any provision of this regulation may file a petition for amendment with the Petroleum Branch, Office of Price Administration, Washington, D. C.

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[3] 9 F. R. 1385, 5169, 6106, 8150, 10193, 11274.

in accordance with the provisions of Revised Procedural Regulation No. 1.[4]

(NOTE: Procedural Regulation No. 6 (9 F. R. 10628; 10 F. R. 1382, 9394) provides for the filing of applications for adjustment of maximum prices for commodities or services under Government contracts or subcontracts. Revised Supplementary Order No. 9 (8 F. R. 6175; 10 F. R. 9394) makes the provisions of Procedural Regulation No. 6, applicable to all price regulations, with the exception of those on scrap, waste, and salvage materials.)

(b) Applications for Adjustment. (1) Any corporation subject to the provisions of this regulation all of whose securities are owned by another corporation, or which owns all of the securities of another corporation or all of whose securities and all of those of another corporation are owned directly or indirectly by a third corporation may file an application for adjustment to a maximum price established under Article II of III for the sale of crude petroleum, [fol. 1261] or petroleum or natural gas to such other corporation.

(2) Such application for adjustment shall be accompanied by a statement under oath setting forth. (i) The percentage of shares or units of any issues of securities of the subsidiary corporation or corporations held beneficially or of record by any person or persons and the names and postoffice addresses of such person or persons (ii) The hardship or inequity which would result to the petitioner from failure to grant the petition.

(3) An application for adjustment under this paragraph shall be filed with the Petroleum Branch, Office of Price Administration, Washington, D. C., in the manner provided for applications for adjustment under Revised Procedural Regulation No. 1.

(c) Local Shortages. The Office of Price Administration, or any duly authorized representative thereof, may adjust by order any maximum price established under this regulation for any seller or group of sellers when it appears:

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[4] 9 F. R. 10476, 13715; 10 F. R. 11295. (C 6052-004) G P O—O P A 14394—p. 1.

(1) That there exists or threatens to exist in a particular locality a shortage in the supply of petroleum gas and natural gas which aids directly in the war program or is essential to a standard of living consistent with the prosecution of the war; and

[fol. 1262] (2) That such local shortage will be substantially reduced or eliminated by adjusting the maximum prices of such seller and of like sellers for such petroleum gas and natural gas; and

(3) That such adjustment will not create or tend to create a shortage, or a need for increase in prices, in another locality, and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended.

Applications for adjustment shall be filed in Washington, D. C. in accordance with Revised Procedural Regulation No. 1.

Sec. 9. Definitions. (a) "Crude petroleum." The term "crude petroleum" does not extend to petroleum products. Crude petroleum does not become a petroleum product until put through a bona fide refinery process which results in the production of more than one petroleum fraction.

(b) "Poster purchase price as of October 1, 1941," means a price posted by a person who, during the 60-day period after October 1, 1941, actually purchased from an operator crude petroleum produced at any pool to which the posted price was applicable.

(Paragraph (b) amended by Am. 7, 9 F. R. 13202, effective 11-9-44.)

[fol. 1263] (c) "Person" when used in this regulation includes any individual, corporation, partnership, association, or any other organized group of persons, their legal successors and representatives.

(d) "Pool" means any underground accumulation of crude petroleum as associated hydrocarbon substances, including but not limited to natural gas, constituting a single and separate reservoir or source of supply within a field, area or horizon whether or not presently discovered or developed.

(e) "Contract" means an agreement, the existence of which is existence of which is established by written evidence.

(f) (Revoked.)

(Paragraph (f) revoked by Am. 3, 9 F. R. 8187, effective 7-24-44.)

(g) "Receiving tank" means the tank of the producer of crude petroleum, sometimes called stock tank or shipping tank, in which the oil from one or more wells is first gauged or measured for sale, delivery or storage.

(h) "Seller of the same class" means a seller (1) performing the same function, (2) of similar type; (3) dealing in the same type of commodity, and (4) selling to the same class of purchaser.

[fol. 1264] (i) "Wet gas" means any natural or petroleum gas, and refinery gas, which is sold to be processed for the extraction of vapors and liquids, from which operation some residue gas results.

(j) "Dry gas" means any natural or petroleum gas, and refinery gas, sold for consumption either directly as fuel or to be consumed in the production of any other commodity or for use in gas lift, pressure maintenance or repressuring operations, and includes such gas when delivered directly from wells, and the residue gas resulting from extraction operations.

ARTICLE II—Maximum Prices for Crude Petroleum

Note: How to determine maximum prices for crude petroleum. To determine the maximum price for crude petroleum, first examine section 10 to see whether a specific price has been established for the particular field. If no specific price has been established for the particular field, then the formula in section II shall be used to determine the maximum price. After asserting a maximum price under section 10 or 11, examine section 12 to determine whether or not any increase or increases have been made thereto.

(Note amended by Am. 2, 9 F. R. 7765, effective 8-1-44.)

[fol. 1265] Sec. 10. Specific Prices. The following specific prices shall be the maximum prices for the items

named at the points enumerated below. Where a contract was in effect on October 1, 1941, for the purchase of crude petroleum at the receiving tank at a price in excess of the highest posted purchase price as of October 1, 1941, for the given pool applicable to such production and deliveries were made prior to or within 60 days after October 1, 1941, in accordance with such contract, and if a specific maximum price has been established for crude petroleum produced at such pool under section 10, then the maximum price at the receiving tank for the production covered by the contract shall be the sum of the price actually charged on October 1, 1941, or if no delivery was made on October 1, 1941, on the first delivery after such date and the difference between the specific price as set out in this section 10, and the highest posted price as of October 1, 1941, except that on and after May 17, 1943, the maximum price at the receiving tank for crude petroluem produced in the Franklin heavy sand crude area located in Venango County Pennsylvania, shall be the sum of the two amounts specified above and 20¢ per barrel.

(Above paragraph amended by Am. 3, 9 F. R. 8187, effective 7-24-44, and Am. 17, 10 F. R. 9669, effective 8-8-45.)

[fol. 1266] Illustration: A contract for the purchase of crude petroleum was in effect on October 1, 1941, at 25¢ per barrel above the posted price, which posted price was $1.00 per barrel, and a specific price for the pool is established at $1.10 per barrel. The maximum price will be the sum of the contract price and the difference between the specific price and the posted price. The difference between the specific price ($1.10) and the posted price ($1.00) is $.10, therefore, the maximum price would be 10¢ plus the contract price of ($1.25) or $1.35.

Where contracts of the type described above were in effect on October 1, 1941, duly authenticated copies of such contracts shall be filed by the purchaser with the Petroleum Branch of the Office of Price Administration at Washington, D. C., within thirty days after August 19, 1943, unless copies of said contracts have heretofore been filed with the Office of Price Administration.

(a) Arkansas—(1) McKamie, Dorcheat, Macedonia and Big Creek Pools. The maximum price at the receiving tank for sour distillate produced in the McKamie pool, Lafay-

ette County, Arkansas, and in the Dorcheat pool, the Macedonia pool and Big Creek pool, Columbia County, Arkansas shall be $1.25 per barrel.

(2) Smackover Field. The maximum price at the receiving tank for Crude petroleum produced in the Smackover Field, Quachita and Union Counties, Arkansas, shall be a flat price of 98¢.

(Subparagraph (2) amended by Am. 2, 9 F. R. 7765, effective 8-1-44; and Am. 4, 9 F. R. 9460, effective 8-1-44.)

[fol. 1267] Smart Field. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above, produced in the Smart Field in Columbia County, Arkansas, shall be $1.18 per barrel with the customary differentials for lower gravity crudes.

(4) Stephens Field. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Stephens Field in Nevada, Quachita and Columbia Counties, Arkansas, shall be $1.18 per barrel with the customary differentials for lower gravity crudes.

(5) Urbana Field. Effective January 12, 1944, the maximum price at the receiving tank for heavy Urbana crude oil produced in the Urbana Field, Union County, Arkansas, shall be 88¢ per barrel.

(6) Midway. On and after April 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Midway field, Lafayette County, Arkansas, shall be $1.18 per barrel with a 2-cent per degree differential down to 86 cents for below 25°.

(Subparagraph (6) added by Am. 13, 10 F. R. 4661, effective 5-2-45.)

C6052-004) GPO OPA 14394—p. 2.

[fol. 1268] (7) Lewisville. On and after October 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Lewisville pool, Lafayette, County, Arkansas, shall be $1.18 per barrel with a 2¢ per degree differential for lower gravities down to 86¢ for below 25°.

(Subparagraph (7) added by Am. 18, 10 F. R. 12117, effective 10-1-45.)

(b) California—(1) Ventura Avenue Field. Effective February 2, 1942, the maximum price at the receiving tank for royalty crude petroleum produced in the Ventura Avenue Oil Field on all sales made to Shell Oil Company, Inc., lessee, and its successors and assigns by the persons entitled from time to time to share in the royalty interests reserved under oil leases known as the Taylor, Edison and Gosnell leases, shall be as follows:

API Gravity:	Price Per Barrel
26-26.9	$1.075
27-27.9	1.11
28-28.9	1.14
29-29.9	1.1675
30-30.9	1.195

Maximum prices for crude petroleum of gravities higher or lower than those set forth above shall be the prices for such gravities established as of October 1, 1941, between Tidewater Associated Oil Company and certain of its lessors in the Ventura Avenue Oil Field.

(Dollars per 42-gallon barrel)

Fields—see key below

API gravity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21		
8–8.9			0.71																				
9–9.9			.73																				
10–10.9			.75																				
11–11.9		0.92	.77	0.92																			
12–12.9		.94	.79	.94			0.94																
13–13.9		.96	.81	.96			.96												0.91				
14–14.9	0.98	.98	.83	.98	0.98	0.95	.98		0.98	0.96			0.97	0.95	0.95	0.95	0.95		.93		0.95		
15–15.9	.98	.98	.85	.98	.98	.95	.98	0.94	.98	1.00	1.01	0.89	.97	.97	.97	.96	.97	0.93	.96	1.01	.95		
16–16.9	.98	.98	.85	.98	.98	.95	.98	.94	.98	1.00	1.01	.89	.97	.97	.97	.96	.97	.93	.96	1.01	.95		
17–17.9	.98	.98	.85	.98	.98	.95	.98	.94	.98	1.00	1.01	.89	.97	.97	.97	.96	.97	.93	.96	1.01	.95		
18–18.9	.98	.98		.98	.98	.95	.98	.94	.98	1.00	1.01	.89	.97	.97	.97	.96	.97	.93	.96	1.01	.95		
19–19.9	.98	.98		.98	.98	.95	.98	.94	.98	1.00	1.01	.89	.97	.97	.97	.96	.97	.93	.96	1.01	.95		
20–20.9	.98	.98		.98	.98	.95	.98	.94	.98	1.00	1.01	.89	.97	.97	.97	.96	.97	.93	.96	1.01	.95		
21–21.9	.98	.98		.98	.98	.95	.98	.94	.98	1.00	1.01	.89	.97	.97	.97	.96	.97	.93	.96	1.01	.95		
22–22.9	.98	.98		.98	.98	.95	.98	.94	.98	1.00	1.01	.91	.97	.97	.97	.96	.97	.96	.98	1.02	.95	.92	

| | | |

[fol. 1270] [1] Where on October 1, 1941, it was the established practice to post the price for each gravity at the .5 point and to interpolate prices to the nearest cent per barrel for the intermediate gravities such practice may be continued using the price in the table for each degree of gravity as the price for the .5 point.

(Footnote added by Am. 7, 9 F. R. 13202, effective 11-9-44)

The price specified for the highest gravity crude oil in each column is the maximum price for crude oil of higher gravities.

Key to Fields

1. Edison.
2. Midway, Lake View Area, Elk Hills Shallow Zone, Buena Vista Hills, Mountain View.
3. Los Flores, Casmalia, Oxnard, Cat Canyon, Santa Maria Valley, Gato Ridge.
4. Round Mountain, McKittrick, Newhall Coffee Canyon, Mt. Poso, Poso, Kern River, Kern Front, Fruitvale.
5. Belridge, Lost Hills.
6. South Mountain, Santa Paula, Wheeler Ridge.
7. Coalinga.
8. Venice, Playa del Rey.
9. Orcutt.

[fol. 1271] 10. Huntington Beach.
11. Inglewood.
12. Aliso Canyon.
13. Montebello.
14. Olinda, Brea Canon.
15. Torrance.
16. Richfield.
17. La Habra, Whittier, East Coyote.
18. Signal Hill.
19. Wilmington, Beverly Hills.
20. El Segundo.
21. Oak Canyon.
22. Seal Beach.
23. Elk Hills Stevens Zone.

(Table amended by Am. 10, 10 F.R. 1370, effective 2-1-45.)

(3) Capitan Field. On and after January 1, 1946, the maximum at the receiving tank for crude petroleum produced in the Capitan Field, California, shall be as follows:

A.P.I. gravity:	Price per barrel
14-14.9	$0.95
15-15.9	.95
16-16.9	.95
17-17.9	.95
18-18.9	.95

[fol. 1272]

19-19.9	.95
20-20.9	.95
21-21.9	.95
22-22.9	.95
23-23.9	.95
24-24.9	.95
25-25.9	.95
26-26.9	.99
27-27.9	1.03
28-28.9	1.06
29-29.9	1.08
30-30.9	1.11
31-31.9	1.13
32-32.9	1.16
33-33.9	1.18
34-34.9	1.21
35-35.9	1.25
36-36.9	1.28
37-37.9	1.32
38-38.9	1.35
39-39.9	1.38

(Subparagraph (3) amended by Am. 21, 11 F.R. 1353, effective 2-9-46.)

[fol. 1273] (4) Price Based on Posted Price of One of Fields Designated in (2) or (3) above.

If crude petroleum produced at a pool which had no posted price was on the last delivery prior to March 26, 1943, sold to a particular purchaser on the basis of the posted price for another pool and at such price, the seller's maximum price

for the crude petroleum produced at the former pool shall be the same as the posted price of the latter pool as shown in (2) or (3) above for the same gravity crude oil.

Any purchaser who pays for crude petroleum on the basis of this provision shall within 30 days from the effective date of this regulation, report the following information to the Office of Price Administration, Petroleum Branch, Washington, D. C.

(i) Copy of posted price bulletin of field on which purchase price is based, and the date effective.

(ii) The total production of the pool for the month of March, 1943.

(iii) The total amount purchased from the pool during Marc.. 1943.

(5) Other Fields Than Listed in (2), (3) and (4) Above. The maximum price at the receiving tank for crude petroleum produced in fields in California other than those named [fol. 1274] in Article II, sections 10, (b) (2) and (3) and other than those fields determining maximum prices under Article II, section 10(b) (4) shall be the sum of the maximum price as determined by other provisions of this regulation and the amount designated below:

A.P.I. gravity:	Increase per barrel
Below 15	$0.25
15-15.9	.25
16-16.9	.22
17-17.9	.19
18-18.9	.16
19-19.9	.13
20-20.9	.10
21-21.9	.07
22-22.9	.04
23-23.9	.01

Provided, However, That the maximum price for a particular gravity crude shall not be less than that for a lower gravity crude from the same seller's receiving tank in the same pool.

[fol. 1275] (c) Colorado—(1) Moffat, Tow Creek and Wilson Creek Fields. The maximum price at the receiving tank

for crude petrolem produced in the Moffat, Tow Creek and Wilson Creek Fields in the State of Colorado shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 29	$1.01
29-29.9	,1.03
30-30.9	1.05
31-31.9	1.07
32-32.9	*1.09
33-33.9	1.11
34-34.9	1.13
35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

(d) Illinois—(1) Plymouth Pool. The maximum price at the receiving tank for crude petroleum produced in the [fol. 1276] Plymouth Rool, McDonough County, Illinois, shall be $1.15 per barrel.

(e) Kentucky—(1) Uniontown Field. The maximum price at the receiving tank for crude petroleum produced in the Uniontown Field, Union County, Kentucky, shall be $1.37 per barrel.

(2) Various Designated Areas. The maximum prices at the receiving tank for crude oil produced in the areas, in the State of Kentucky, designated below shall be:

Area:	Price per 42-gallon barrel
Big Sandy River (Somerset crude)	$1.43
Sebree Field, Webster County	1.37
Belton Field, Muhlenberg County	1.37
Spottsville, Henderson County	1.37
Owensboro Area	1.37
Bowling Green Area	1.17
Butler County	*1.37

(* Price amended by Am. 13, effective 5-2-46; corrected 10 F.R. 578 6, effective as of 4-1-45.)

Maximum prices established herein may be charged any purchaser who agreed on or prior to June 1, 1948, to pay a price determined in accordance with the disposition of the [fol. 1277] petition filed with the Office of Price Administration.

(f) Louisiana—(1) Anse La Butte Field. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Anse Le Butte Field in St. Martin Parish, Louisiana, shall be $1.30 per barrel with the customary differentials for lower gravity crudes.

(2) Bayou Des Allemands, Raceland, Gibson, Lake Arthur, Tepetate, North Tepetate, and Abbeville Fields. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Bayou Des Allemands Field in La Fourche and St. Charles Parishes, Raceland Field in La Fourche Parish, Gibson Field in Terrebonne Parish, Lake Arthur, Tepetate, North Tepetate and Abbeville Fields all located in Louisiana, shall be $1.30 per barrel with the customary differentials for lower gravity crudes.

(3) Caddo Pool. The maximum price at the well for crude petroleum of 40° API gravity and above, produced in the Caddo Pool in Louisiana shall be $1.20 per barrel with the customary differentials for lower gravity crudes.

(4) Olla, South Olla and Little Creek Pools. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above, produced in the Olla, South Olla, and Little Creek Pools, LaSalle Parish, Louisiana, shall be $1.35 per barrel, with the customary differentials [fol. 1278] for lower gravity crudes.

(5) Ritchie Field. The maximum price at the well for crude petroleum of 40° API gravity and above, produced in any pool in Ritchie Field, Acadia Parish, Louisiana, shall be $1.48 per barrel with the customary differentials for lower gravity crudes.

(6) South Elton Field. The maximum price at the receiving tank for the crude petroleum and crude distillate produced in the South Elton Field, Jefferson Davis Parish, Louisiana, shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 21	0.90
21-21.9	.92
22-22.9	.94
23-23.9	.96
24-24.9	.98
25-25.9	1.00
26-26.9	1.02
27-27.9	1.04
28-28.9	1.06
29-29.9	1.08
30-30.9	1.10
31-31.9	1.12
[fol. 1279] 32-32.9	1.14
33-33.9	1.16
34-34.9	1.18
35-35.9	1.20
36-36.9	1.22
37-37.9	1.24
38-38.9	1.26
39-39.9	1.28
40 and above	1.30

(7) Tullos-Urania Field. The maximum price at the receiving tank for crude petroleum produced in the Tullos-Urania Field, LaSalle Parish, Louisiana, shall be a flat price of $1.25 per barrel,

(8) University Field. The maximum price at the well for crude petroleum of 40° API gravity and above, produced in any pool in University Field, East Baton Rouge Parish, Louisiana, shall be $1.48 per barrel with the customary differentials for lower gravity crudes.

(9) Ville Platte Field. The maximum price at the receiving tank for crude petroleum produced in the Ville Platte Field, Evangeline Parish, Louisiana, shall be $1.30 per barrel.

[fol. 1280] (10) Vacherie (Hester) Field. The maximum price at the receiving tank for crude petroleum produced in

the Vacherie (Hester) Field, St. James Parish, Louisiana, shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 21	0.90
21-21.9	.92
22-22.9	.94
23-23.9	.96
24-24.9	.98
25-25.9	1.00
26-26.9	1.02
27-27.9	1.04
28-28.9	1.06
29-29.9	1.08
30-30.9	1.10
31-31.9	1.12
32-32.9	1.14
33-33.9	1.16
34-34.9	1.18
35-35.9	1.20
36-36.9	1.22
37-37.9	1.24
38-38.9	1.26
39-39.9	1.28
40 and above	1.30

[fol. 1281] (Subparagraph (10) added by Am. 1, 9 F. R. 7519, effective 7-10-44.)

(11) Miscellaneous Fields. The maximum price at the receiving tank for crude petroleum produced in the Avery Island, Barataria, Bateman Lake Crude Oil, Bateman Lake Cycle Condensate, Bay de Chene, Delacroix Island, Delta Duck, Delta Farms, Dog Lake, Erath, Fausse Point, Golden Meadow, Horshoe Bayou, Jefferson Island, Lake Salvador, Lafitte, Paradis, Plumb Bob, Stella, Vermillion Bay, and West Cote Blanche Bay fields in the State of Louisiana shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 21	0.90
21-21.9	.92
22-22.9	.94
23-23.9	.96
24-24.9	.98
25-25.9	1.00
26-26.9	1.02
27-27.9	1.04
28-28.9	1.06
29-29.9	1.08
30-30.9	1.10
31-31.9	1.12
32.32.9	1.14
[fol. 1282] 33-33.9	1.16
34-34.9	1.18
35-35.9	1.20
36-36.9	1.22
37-37.9	1.24
38-38.9	1.26
39-39.9	1.28
40 and above	1.30

(12) Lisbon Field. The maximum price at the receiving tank for crude distillate produced in the Lisbon Field, Claiborne Parish, Louisiana, shall be $1.40 per barrel.

(Subparagraphs (11) and (12) added by Am. 7, 9 F. R. 13202, effective 11-9-44.)

(13) Rodessa Field. On and after March 1, 1946, the maximum price at the receiving tank for condensate produced from the Rodesso Field, Cass and Marion Counties, Texas, and Caddo Parish, Louisiana, shall be $1.30 per barrel.

(Subparagraph (13) added by Am. 22, effective 3-1-46.)

[fol. 1283] (g) Michigan—(1) Headquarters Field. The maximum price at the receiving tank for crude petroleum produced in the Headquarters Field, Roscommon County, Michigan, shall be $1.48 per barrel.

(2) South Bangor Pool. The maximum price at the receiving tank for crude petroleum produced in the South Bangor Pool, Bangor Township, Van Buren County, Michigan, shall be $1.27 per barrel.

(h) Mississippi—(1) Pickens Field. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Pickens Field, Yazoo and Madison Counties, Mississippi, shall be $1.18 per barrel with the customary differentials for lower gravity crudes.

(2) Tinsley Field. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Tinsley Field, Yazoo County, Mississippi, shall be $1.18 per barrel with the customary differentials for lower gravity crudes.

Such maximum price is effective as of May 22, 1943, except that where a buyer agreed that prices for deliveries [fol. 1284] made during the pendency of his petition for amendment should be determined in accordance with the disposition of such petition he may pay and the seller may charge a price in accordance with such agreement.

(i) Nebraska—(1) Falls City Field and Barada Field. The maximum price at the receiving tank for crude petroleum produced in the Falls City Field and the Barada Field, Richardson County, Nebraska, shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 21	0.85
21-21.9	.87
22-22.9	.89
23-23.9	.91
24-24.9	.93
25-25.9	.95
26-26.9	.97
27-27.9	.99
28-28.9	1.01
29-29.9	1.03
30-30.9	1.05
31-31.9	1.07
32-32.9	1.09
33-33.9	1.11
34-34.9	1.13
[fol. 1285] 35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

(j) New Mexico—(1) Loco Hills Area. The maximum price at the well for crude petroleum of 40° API gravity and above produced in the Loco Hills Area of Eddy County, New Mexico shall be $1.12 per barrel with the customary differentials for lower gravity crudes.

(k) Ohio—(1) Lima Oil Field in Northwestern Ohio and Northeastern Indiana. The maximum price for crude petroleum produced in the Lima Oil Field, located in Northwestern Ohio and Northeastern Indiana, shall be $1.50 a barrel at the receiving tank; Provided, That where the price paid for crude petroleum from a particular receiving tank in the Lima Oil Field as of October 1, 1941, exceeded $1.50 per barrel, the maximum price at the same receiving tank shall be the price so paid or $1.60 a barrel, whichever is the lower.

[fol. 1286] (2) Cow Run Sand. On and after October 1, 1945, the maximum price at the receiving tank for crude petroleum produced from the Cow Run Sand, Athens County, Ohio, shall be $2.25 per barrel.

(Subparagraph (2) added by Am. 18, 10 F. R. 12117, effective 10-1-45.)

(3) The maximum price at the receiving tank for crude petroleum produced from the Berea Sand, Meigs County, Ohio, shall be $2.25 per barrel.

(Subparagraph (3) added by Am. 19, 10 F. R. 12988, effective 10-23-45; amended by Am. 20, 10 F. R. 15170, effective 12-23-45.)

(l) Oklahoma—(1) Bald Hill, Edna East, Pollyanna, Kellyville and Slick Pools. On and after August 1, 1944, the maximum price at the receiving tank for crude petroleum produced from the Bald Hill, Edna East, and Pollyanna Pools, Okmulgee County and Kellyville and Slick Pools, Creek County, Oklahoma, shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 29	1.01
29-29.9	1.03
30-30.9	1.05
31-31.9	1.07
32-32.9	1.09

API gravity:	Dollars per 42-gallon barrel
[fol. 1287] 33-33.9	1.11
34-34.9	1.13
35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

(2) On and after August 1, 1944, the maximum price at the receiving tank for crude petroleum produced from all pools in the State of Oklahoma with the exception of the pools listed in (1) above shall be as follows:[1]

API gravity:	Dollars per 42-gallon barrel
Below 21	$0.85
21-21.9	.87
22-22.9	.89
23-23.9	.91
24-24.9	.93
25-25.9	.95
26-26.9	.97
27-27.9	.99
28-28.9	1.01
29-29.9	1.03
30-30.9	1.05
31-31.9	1.07
32-32.9	1.09
[fol. 1288] 33-33.9	1.11
34-34.9	1.13
35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

[1] The maximum price for the Cement Pool in Caddo County, Oklahoma, and the Oklahoma City Pool, Oklahoma County, Oklahoma, shall be according to the above scale but shall be reduced 3¢ for each degree of gravity below 20 down to 16 degrees. Below 16 gravity $.70.

(m) Pennsylvania Grade Area. The maximum price at the receiving tank for crude petroleum produced in the Pennsylvania grade area shall be as follows:

	Maximum price per barrel
Bradford-Alleghány	$3.00
Southwest Pennsylvania	2.65
Eureka	2.59
Southeastern Ohio	2.55
Zanesville	2.25
Blue Rock Niagara Lime Sand	2.25

[fol. 1289] The maximum price at the receiving tank to each purchaser of Pennsylvania grade crude petroleum produced in any other area in Pennsylvania shall be the price paid by such purchaser for such crude petroleum produced in such area on October 1, 1941, plus 25 cents a barrel. Each purchaser is required within 30 days of the effective date of this amendment (Am. 7) to submit to the Petroleum Branch of the Office of Price Administration, Washington, D. C., a schedule of the prices actually paid on October 1, 1941.

(Paragraphs (l) and (m) amended by Am. 5, 9 F.R. 11904, effective 10-3-44; and Am. 7, 9 F. R. 13202, effective 11-9-44.)

(n) Texas—(1) East Texas. Effective February 2, 1942, the maximum price for East Texas crude petroleum sold by the Houston Oil Company of Texas delivered into tank No. 11, Peterson Tank Farm, Isaac Ruddle Survey, Rusk County, Texas, shall be $1.30 per barrel.

(2) North and North Central Texas and Red River Bed in Tillman County, Oklahoma. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above, produced in Archer, Baylor, Brown, Callahan, Clay, Coleman, Comanche, Cooke, Eastland, Erath, Fisher, Foard, Haskell, Jack, Jones, Montague, Palo, Pinto, Shackelford, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, and Young Counties, Texas, and in the bed of the Red River [fol. 1290] in Tillman County, Oklahoma, shall be $1.25 per barrel with the customary differentials for lower gravity crudes.

(3) Panhandle Area. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above

produced in Carson, Gray, Hutchinson, Moore, and Wheeler Counties, Texas, shall be $1.22 per barrel, with the customary differentials for lower gravities.

(4) Partlow Lease. Effective February 2, 1942, the maximum price at the receiving tank for crude distillate of 50° API gravity and above produced from the Partlow Lease, Hardin Field, Liberty County, Texas, shall be $1.53 per barrel.

(5) Pettus Field. The maximum price at the well for crude distillate produced in the Pettus Field, Bee County, Texas, shall be $1.50 per barrel.

(6) Rincon Field. The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Rincon Field, Starr County, Texas, shall be $1.45 per barrel, with the customary differentials for lower gravity crudes.

(7) Shields Field. Effective December 1, 1942, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Shields Field, Nueces County, Texas, shall be $1.35 per barrel, with the cus- [fol. 1291] tomary differentials for lower gravity crudes.

(8) Talco and Sulphur Bluff Fields. The maximum price at the receiving tank for crude petroleum produced in the Talco and Sulphur Bluff Fields in Franklin, Titus and Hopkins Counties, Texas, shall be as follows:

API gravity	Dollars per 42-gallon barrel
Below 20	0.80
20-20.9	.82
21-21.9	.84
22-22.9	.86
23-23.9	.88
24-24.9	.90
25 and above	.92

(9) Woodsboro Field. The maximum price at the receiving tank for crude petroleum produced in the Woodsboro Field, Refugio County, Texas, and sold by owners of royalty interests shall be a flat price of $1.35 per barrel.

(10) Alta Mesa Field. The maximum price at the receiving tank for crude petroleum produced in the Alta Mesa Field, Brooks County, Texas, shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 20	1.03
20-20.9	1.05
21-21.9	1.07
22-22.9	1.09
[fol. 1292] 23-23.9	1.11
24-24.9	1.13
25-25.9	1.15
26-26.9	1.17
27-27.9	1.19
28-28.9	1.21
29-29.9	1.23
30-30.9	1.25
31-31.9	1.27
32-32.9	1.29
33-33.9	1.31
34-34.9	1.33
35-35.9	1.35
36-36.9	1.37
37-37.9	1.39
38-38.9	1.41
39-39.9	1.43
40 and above	1.45

(Subparagraph (10) added by Am. 1, 9 F. R. 7519, effective 7-10-44.)

(11) Joe's Lake and Silsbee Fields. The maximum price at the receiving tank for crude petroleum of 34° API gravity and above produced in the Joe's Lake and Silsbee Fields, Texas, shall be $1.36 per barrel with the customary differentials for lower gravity crudes.

[fol. 1293] (12) The maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Abell (Ordovician) Field in Pecos County and in the Barnhart (Ordovician) Field in Reagan County, Texas, shall be $1.25 with a 2¢ differential for lower gravities down to 93¢ for below 25°.

(Subparagraphs (11) and (12) added by Am. 7, 9 F. R. 13202, effective 11-9-44.)

(Subparagraph (13) redesignated as sec. 13 (b) by Am. 12, 10 F. R. 3560, effective 3-1-45.)

(14) Old Ocean Field. On and after January 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Old Ocean Field, Brazoria and Matagorda Counties, Texas, shall be $1.48 with a two-cent differential for each degree of gravity down to 20° API. For gravities below 20° API the maximum price at the receiving tank shall be $1.06.

(Subparagraph (14) added by Am. 9, 9 F. R. 15059, effective 1-1-45.)

(15) Sand Hills-Ellenburger-West Field. On and after March 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Sand Hills-Ellenburger-West Field, Crane County, Texas, shall be $1.25 with a $.02 differential for lower gravities down to $.93 for below 25°.

[fol. 1294] (Subparagraph (15) added by Am. 10, 10 F. R. 1370, effective 2-1-45; amended by Am. 11, 10 F. R. 2967, effective 3-22-45.)

(16) Big Lake (Ordovician) Field. On and after March 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Big Lake (Ordovician) Field, Reagan County, Texas, shall be $1.25 with a $.02 differential for lower gravities down to $.93 for below 25°.

(17) La Belle Field. On and after March 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the La Belle Field, Jefferson County, Texas, shall be $1.48 with a $.02 differential for lower gravities down to $1.06 for below 20°.

(18) Various Fields in Starr County, Texas. On and after March 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Sun, North Sun, North Rincon, Frost and Garcia Fields, Starr County, Texas, shall be $1.45 with a

$.02 differential for lower gravities down to $1.03 for below 20°.

(Subparagraphs (16), (17) and (18) added by Am. 11, 10 F. R. 2967, effective 3-22-45.)

(19) Various Fields in Chambers, Hardin, Jefferson and Liberty Counties, Texas. On and after March 1, 1945, the maximum price for crude petroleum of 40° API gravity and [fol. 1295] above produced in the Fig Ridge, Oyster Bayou, Seabreeze and Willow Slough Fields, Chambers County; in the Batson (new) Field, Hardin County; in the South China Field, Jefferson County; and in the Esperson (35° and above), South Esperson and Kirby Fields, Liberty County, Texas, shall be $1.40 with a $.02 differential for lower gravities down to $.98 for below 20°.

(Subparagraph (19) added by Am. 11; amended by Am. 13, 10 F. R. 4661, effective 5-2-45.)

(20) Luby Field. On and after June 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Luby field, Nueces County, Texas, shall be $1.40 per barrel with a 2-cent per degree differential for lower gravities down to 98 cents for below 20°.

(Subparagraph (20) added by Am. 15, 10 F. R. 6948, effective 6-14-45.)

(21) On and after July 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Apco-Warner (Ordovician) field, Pecos County, Texas, shall be $1.25 per barrel with a $0.02 per degree differential for lower gravities down to $0.93 for below 25°.

[fol. 1296] (22) On and after July 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Todd Deep pool, Crockett County, Texas, shall be $1.25 per barrel with a $0.02 per degree differential for lower gravities down to $0.93 for below 25°.

(Subparagraph (21) and (22) added by Am. 16, 10 F.R. 8699, effective 7-17-45)

(23) Adami and Munson. On and after October 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Adami field, Webb County, Texas and in the Munson field, McMullen County, Texas, shall be $1.35 per barrel with a 2¢ per degree differential down to 93¢ for below 20°.

(Subparagraph (23) added by Am. 18, 10 F.R. 12117, effective 10-1-45)

(24) On and after October 1, 1945, the maximum price at the receiving tank for condensate produced from the Waskom field, Harrison County, Texas, shall be $1.30 per barrel.

(Subparagraph (24) added by Am. 19, 10 F.R. 12988, effective 10-23-45)

(25) Monahans-Ellenberger Pool. On and after January 1, 1946, the maximum price at the receiving tank for crude petroleum of 40 degrees A.P.I. gravity and above produced [fol. 1297] from the Monahans-Ellenberger Pool, Ward County, Texas, shall be $1.25 per barrel with a 2¢ per degree differential down to 83¢ for below 20 degrees.

(26) Wheeler-Ellenberger Pool. On and after January 1, 1946, the maximum price at the receiving tank for crude petroleum of 40 degrees A.P.I. gravity and above produced from the Wheeler-Ellenberger Pool, Winkler County, Texas, shall be $1.25 per barrel with a 2¢ per degree differential down to 83¢ for below 20 degrees.

(27) T. X. L.-Ellenberger Pool. On and after January 1, 1946, the maximum price at the receiving tank for crude petroleum of 40 degrees A. P. I. gravity and above produced from the T.X.L.-Ellenberger Pool, Ector County, Texas, shall be $1.25 per barrel with a 2¢ per degree differential down to 83¢ for below 20 degrees.

(28) Bedford-Ellenberger Pool. On and after January 1, 1946, the maximum price at the receiving tank for crude petroleum of 40 degrees A.P.I. gravity and above produced from the Bedford-Ellenberger Pool, Andrews County, Texas, shall be $1.25 per barrel with a 2¢ per degree differential down to 83¢ for below 20 degrees.

(Subparagraphs (25), (26), (27) and (28) added by Am. 21, 11 F.R. 1353, effective 2-9-46)

[fol. 1298] *(29) Rodessa Field. On and after March 1, 1946, the maximum price at the receiving tank for condensate produced from the Rodessa Field, Cass and Marion Counties, Texas and Caddo Parish, Louisiana shall be $1.30 per barrel.*

(Subparagraph (29) added by Am. 22, effective 3-1-46)

(o) Wyoming—(1) Big Muddy Field. The maximum price for crude petroleum produced in the Big Muddy Field, Wyoming, shall be a flat price of $1.13 per barrel.

(2) Lance Creek Field, Salt Creek Field, Iron Creek Field and G.P. Lease. The maximum price at the receiving tank for crude petroleum produced in the Lance Creek Field, Niobrara County, Salt Creek Field, Natrona County, Iron Creek Field, Natrona County, and G. P. Lease, Carbon County, all in the State of Wyoming except crude petroleum produced from the Tensleep Sand shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 21	0.85
21-21.9	.87
22-22.9	.89
23-23.9	.91
24-24.9	.93
25-25.9	.95
26-26.9	.97
27-27.9	.99
28-28.9	1.01
29-29.9	1.03
[fol. 1299] 30-30.9	1.05
31-31.9	1.07
32-32.9	1.09
33-33.9	1.11
34-34.9	1.13
35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

(3) Various Designated Fields. The maximum prices at the receiving tank for black oils produced in the fields designated below shall be:

Field:	Prices per barrel
Black Mountain	$0.55
Byron	.70
Circle Ridge	.65
Dallas and Derby	.55
Elk Basin (Tensleep Crude)	.90
Frannie, heavy	.62
Frannie, light	.85
Garland	.60
Grass Creek, heavy	.65
Hamilton Dome	.60
Hudson (Lander)	.725
Maverick Springs	.6625
[fol. 1300] Notches	.75
Oregon Basin	.65
Pilot Butte	.80
Poison Spider	.65
Salt Creek (Tensleep)	.8285
Sheep Creek	.65
Shoshone	.65
South Casper Creek	.65
Spindletop	.65

(4) Big Sand Draw, Lost Soldier (Ten-sleep), Wertz and Mahoney. On and after May 1, 1945, the maximum price of crude petroleum of 40° API gravity and above produced in the Big Sand Draw field, Fremont County, the Lost Soldier (Tensleep) field, Sweetwater County, and the Wertz and Mahoney fields, Carbon County, Wyoming, shall be $1.12 with a 2-cent differential for each degree of gravity down to $0.70 for below 20°.

(Subparagraph (4) added by Am. 14, 10 F.R. 5369, effective 5-14-45)

(5) Badger Basin, Bailey Dome, Cole Creek, Crooks Gap, Elk Basin, Grass Creek, Lost Soldier and Rock Creek. On and after June 1, 1945, the maximum price at the receiving tank for sweet crude petroleum of 40° API gravity and above produced in the Bailey Dome and Rook Creek fields,

Carbon County, the Badger Basin field, Park County, [fol. 1301] Wyoming, the Grass Creek field, Hot Springs County, the Cole Creek field, Natrona County, the Crooks Gap field, Fremont County, Lost Soldier field, Sweetwater County, Wyoming, and the Elk Basin field, Park County, Wyoming and Carbon County, Montana, shall be $1.25 per barrel with a $.02 per degree differential for lower gravity crudes.

(Subparagraph (4) added by Am. 15, 10 F.R. 6948, effective 6-14-45; amended by Am. 16, 10 F.R. 8699, effective 7-17-45)

(6) Horse Creek and Quealy Dome. On and after October 1, 1945, the maximum price at the receiving tank for crude petroleum of 40° API gravity and above produced in the Horse Creek field, Laramie County, Wyoming, and in the Quealy Dome field, Albany County, Wyoming shall be $1.25 per barrel with a customary 2¢ differential for each degree for lower gravity crudes.

(Subparagraph (6) added by Am. 18, 10 F.R. 12117, effective 10-1-45)

(p) Kansas—(1) Dopita, Morel and Penny-Wann Pools. On and after August 1, 1944, the maximum price at the receiving tank for crude petroleum produced from the Dopita Pool, Rooks County; Morel Pool, Graham County; and Penny-Wann Pool, Ellis County, Kansas, shall be as follows:

[fol. 1302] API gravity:	Dollars per 42-gallon barrel
Below 29	1.01
29-29.9	1.03
30-30.9	1.05
31-31.9	1.07
32-32.9	1.09
33-33.9	1.11
34-34.9	1.13
35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

(2) On and after August 1, 1944, the maximum price at the receiving tank for crude petroleum produced from all pools in the State of Kansas, with the exception of the pools listed in (1) above, shall be as follows:

API gravity:	Dollars per 42-gallon barrel
Below 21	0.85
21-21.9	.87
22-22.9	.89
23-23.9	.91
24-24.9	.93
25-25.9	.95
[fol. 1303] 26-26.9	.97
27-27.9	.99
28-28.9	1.01
29-29.9	1.03
30-30.9	1.05
31-31.9	1.07
32-32.9	1.09
33-33.9	1.11
34-34.9	1.13
35-35.9	1.15
36-36.9	1.17
37-37.9	1.19
38-38.9	1.21
39-39.9	1.23
40 and above	1.25

(Paragraph (p) added by Am. 5, 9 F. R. 11904, effective 10-3-44; amended by Am. 7, 9 F. R. 13202, effective 11-9-44.)

Sec. 11. Formula for Determining Maximum Prices. (a) Maximum price at the receiving tank for crude petroleum from any given pool shall be the posted purchase price as of October 1, 1941, for such pool, except that the maximum price at any receiving tank, without pipe line gathering facilities, for crude petroleum produced from any pool listed under Section 12 of this regulation or included by order pursuant to the provisions of such section 12, shall be the price paid at such receiving tank as of August 1, 1944.

[fol. 1304] (Paragraph (a) amended by Am. 7, 9 F. R. 13202, effective 11-9-44 and Am. 10, 10 F. R. 1350, effective 2-1-45).

(b) Where on October 1, 1941, there was for any given pool no posted purchase price, or more than one posted purchase price, the maximum price for a particular operator at the receiving tank for crude petroleum from such pool shall be the price paid for crude petroleum at any receiving tank of the same operator as of October 1, 1941, unless this price is below the highest of the posted purchase prices, if any, and in that case, the maximum price shall be the highest posted purchase price: Provided, however, That a price paid pursuant to a contract in effect on October 1, 1941, and entered into prior to that date, shall not be considered in determining the maximum price for crude petroleum unless the contract price reflected current market conditions on or about October 1, 1941.

(Paragraph (b) amended by Am. 7, 9 F. R. 13202, effective 11-9-44).

(c) Where a contract was in effect on October 1, 1941, for the purchase of crude petroleum at the receiving tank at a price in excess of the highest posted purchase price for the given pool applicable to such production and deliveries were made prior to or within 60 days after October 1, 1941, in accordance with such contract, then the price actually charged on October 1, 1941, or if no de- [fol. 1305] livery was made on October 1, 1941, on the first delivery after such date, shall be the maximum price for the production covered by the contract.

(d) Where the maximum price for any sale of crude petroleum at the receiving tank cannot be determined under (2) through (c) above, the seller or purchaser shall set a tentative price for the crude petroleum at the particular receiving tank or tanks which shall be in line with the maximum prices for comparable crude petroleum in the same general area. Within ten days after setting such a tentative price the seller or purchaser shall file with the Petroleum Branch of the Office of Price Administration, Washington, D. C., a written request for approval of such tentative price. The person filing such request shall file in connection therewith a statement setting forth:

(1) Such tentative price.

(2) An explanation as to why it is impossible to determine his maximum price under paragraph (a), (b) or (c) of this section 11.

(3) A description of the available transportation facilities, and a description of the gravity, characteristics and source of the crude petroleum in question.

Such tentative price shall be the maximum price for crude petroleum produced from the same pool until a substitute maximum price is set in writing by the Petroleum Branch of the Office of Price Administration, Washington, D. C. If a seller and purchaser have agreed upon a price for the sale of crude petroleum subject to the approval [fol. 1306] of the Office of Price Administration, a maximum price determined in accordance with this paragraph (d) shall be effective retroactively to February 2, 1942, or the date of the agreement whichever is later.

(e) The maximum price for crude petroleum sold at a point other than the receiving tank shall be at no greater differential at such point over the maximum price for such crude at the receiving tank than the highest differential that existed on October 1, 1941, between the price at the receiving tank and the price at such point: Provided, however, That such a differential established pursuant to a contract in effect on October 1, 1941, and entered into prior to that date shall not be considered in determining the maximum price at that point unless the differential reflected current market conditions on or about October 1, 1941.

(f) Where a maximum price at a point other than at the receiving tank cannot be determined under paragraph (e) above, the seller shall establish a tentative differential for a sale of crude petroleum at such point where such is possible. Where such is not possible, the seller shall set a tentative price. Within ten days after setting such tentative differential or price, the seller shall file with the Petroleum Branch of the Office of Price Administration in Washington, D. C., a written request for approval of such [fol. 1307] tentative differential or price accompanied by a statement setting forth:

(1) Such tentative differential or price.

(2) An explanation as to why it is impossible to determine his maximum price at the particular point under paragraph (e) of this regulation.

(3) The location of the source of the crude petroleum in question and of the particular delivery point, and

(4) An itemized statement of the costs involved in transporting the crude petroleum from the receiving tank to the particular delivery point and of any other items comprising the tentative differential or price.

Such tentative differential or price shall be the seller's maximum differential or maximum price for the particular sale and for all subsequent sales of crude petroleum from the same receiving tank delivered at that point unless it is disapproved in writing or a substitute maximum differential or maximum price is set in writing by the Office of Price Administration. If a seller and purchaser have agreed upon a price for a sale of crude petroleum at a point other than at the receiving tank subject to the approval of the Office of Price Administration, a maximum differential or maximum price determined in accordance with this paragraph (f) shall be effective retroactively to February 2, 1942, or the date of the agreement, whichever is later. [fol. 1308] Sec. 12. Increases to Maximum Prices—(a) Maximum price increases or revisions. The Price Administrator may by written order increase or revise the maximum price of crude petroleum produced from any pool:

(1) Where the daily average per well production during the month of December, 1943, was less than 9 (42-gallon) barrels, on the following basis:

	Amount of price increase (dollars per 42-gallon barrel)
Less than 5	0.35
5 and above but less than 7	.25
7 and above but less than 9	.20

(2) On the basis of the schedule in (c) (1) where the daily average per well production for the 12-month period preceding the date of the application for the increase was less than 9 (42-gallon) barrels and the number of wells used in the computation is determined by dividing by twelve the sum of the number of wells producing crude petroleum during each month of the 12 month period, or

(3) Where the daily average per well production is 9 barrels or more and it is found that (a) because of cer-

tain high cost factors, the maximum price for crude oil produced from a particular pool is below the average cost of production and (b) the cost of production is not out of proportion to the output obtainable.

(Former paragraph (a) revoked, (c) redesignated (a); paragraphs (b) and (d) revoked by Am. 12, 10 F. R 3560, effective 3-1-45.)

[fol. 1309] (b) (Revoked)
(d) (Revoked)

(Sec. 12 added by Am. 2, 9 F.R. 7765, effective 8-1-44; amended by Am. 4, 9 F.R. 9406, effective 8-1-44; Am. 6, 9 F.R. 13154, effective 10-1-44 and Am. 10, 10 F.R. 1370, effective 1-1-45 and 2-1-45. Former sections 12, 13 and 14 redesignated 13, 14 and 15 by Am. 2)

Article III—Maximum Prices for Natural and Petroleum Gas

Note: How to determine maximum prices for natural and petroleum gas. To determine the maximum price for natural and petroleum gas, first examine section 13 to see whether a specific price has been established. If no specific price has been established, then the maximum price for wet gas shall be determined in accordance with section 14 and the maximum price for dry gas shall be determined in accordance with section 15.

Sec. 13. Specific prices. The following specific prices shall be the maximum prices for the items named at the points enumerated below:

(a) Sweet natural gas, Hugoton Field, Oklahoma. The maximum price for sweet natural gas, without liquid hydrocarbon fractions being extracted, produced in the Hugoton Field, located in the State of Oklahoma, for use in the manufacture of furnace black, shall be 4¢ per thousand cubic feet at a base pressure of 16.4 pounds per square inch absolute. (1943 Fed. R. 17327)

(b) Refugio County. Effective November 7, 1944, the maximum price for residue gas f.o.b. plants, Refugio County, Texas, shall be 3¢ per m.c.f.

[fol. 1310] (Paragraph (b), formerly Sec. 10 (n) (13) added by Am. 8, 9 F.R. 13869, effective 11-7-44; redesignated by Am. 12, 10 F.R. 3560, effective 3-1-45)

(c) Panhandle field, Texas. (1) On and after October 1, 1945, the maximum price at the exit side of the natural gasoline plant for the sale of sour residue gas produced from the Panhandle oil and/or gas field of Texas to be used in the manufacture of channel carbon black shall be 2.12 cents per m.c.f. for such gas containing 970 b.t.u. or less per cubic foot and shall be increased .105 cent per m.c.f. for each additional 10 b.t.u. per cubic foot in excess of 970 contained therein. Such gas shall be measured at a pressure of 14.65 pounds per square inch absolute corrected to a temperature of 60° F. and the b.t.u. content shall be calculated on a monthly average basis.

(2) On and after October 1, 1945, the maximum price at the exit side of the natural gasoline plant for the sale of sweet residue gas produced from the Panhandle oil and/or gas field of Texas to be used in the manufacture of channel carbon black shall be 2.62 cents per m.c.f. for such gas containing 970 b.t.u. or less per cubic foot and shall be increased .105 cent per m.c.f. for each additional 10 b.t.u. in excess of 970 per cubic foot contained therein. Such gas shall be measured at a pressure of 14.65 pounds per square inch absolute corrected to a temperature of 60° F. and the b.t.u. content shall be calculated on a monthly average basis.

[fol. 1311] (3) "Sour gas" as used in this regulation shall mean any residue gas containing 1½ grains of hydrogen sulphide or more per 100 cubic feet or 30 grains of total sulphur or more per 100 cubic feet and "sweet gas" as used in this regulation shall mean residue gas containing less than 1½ grains of hydrogen sulphide per 100 cubic feet or less than 30 grains of total sulphur per 100 cubic feet.

(Paragraph (c) added by Am. 18, 10 F.R. 12117, effective 10-1-45)

Sec. 14. Formula for Determining Maximum Prices—Wet Gas. (a) A seller's maximum price at any particular time for wet gas produced from any given field shall be the highest prices that could be charged at that time under the terms and conditions of any contract which was in effect

on May 1, 1942, between the seller and the purchaser for the sale of wet gas produced from such field. Provided, That where the price in any contract for the sale of wet gas is computed, in whole or in part, as a percentage of the price received for the sale of residue gas, the producers maximum price for wet gas under said contract shall be computed on the basis of such percentage of the maximum price for the sale of residue gas in the area as determined by the provisions of this regulation.

(Proviso added by Am. 21, 11 F.R. 1353, effective 2-9-46)

(b) If a seller had no contract in effect with a particular purchaser on May 1, 1942, for wet gas produced from any given field, then such seller's maximum price to such [fol. 1312] purchaser at any given field shall be the highest price that could be charged at that time under the terms and conditions of any contract which was in effect on May 1, 1942, between such seller and a purchaser of the same class for the sale of wet gas produced from such field.

(c) Where a maximum price for wet gas cannot be determined under (a) or (b) or where a maximum price has been determined under (a) or (b) and a product is being extracted, condensed, or saved by the purchaser from the wet gas which is either of substantially greater value than its value at the time of execution of the contract or is a product that the parties to the contract did not contemplate would be extracted, condensed or saved at the time of the execution of the contract, the seller or purchaser shall set a tentative price for the wet gas. Within 15 days after setting such a tentative price the seller or purchaser shall file with the Petroleum Branch of the Office of Price Administration, Washington, D. C., a written request for approval of such tentative price. The person filing such request shall file in connection therewith a statement setting forth:

(1) An explanation as to why it is impossible for the seller to establish a maximum price under paragraphs (a) or (b).

(2) The tentative maximum price and an explanation of the method used in arriving at such price.

[fol. 1313] (3) The maximum prices for sellers and purchasers of the same class at the two nearest fields to the one in question if known, and

(4) If a written contract has been entered into, an authenticated copy thereof.

Such tentative price shall be the maximum price for the production from the field to such purchasers until a substitute maximum price is set in writing by the Petroleum Branch of the Office of Price Administration, Washington, D. C. Ordinarily, a tentative price set under this paragraph (c) will not be approved unless such price is in line with the maximum prices for sellers and purchasers of the same class at the nearest fields to the one in question.

(Paragraph (c) amended by Am. 7, 9 F.R. 13202, effective 11-9-44)

Sec. 15. Formula for Determining Maximum Prices—Dry Gas. (a) Where a contract for the sale of dry gas was in effect on May 1, 1942, the seller's maximum price to the same purchaser for deliveries of dry gas produced from the same source or sources as the dry gas covered by the contract shall not exceed the price that could be charged for such deliveries under the terms of the contract that was in effect on May 1, 1942: Provided however, (1) That where under the terms of any contract in effect on May 1, 1942, between a seller and a purchaser, the price for dry gas was adjustable to the price of fuel oil, the seller's maximum [fol. 1314] price to such purchaser shall be computed by regarding the maximum price of fuel oil on May 1, 1942, as the price of such fuel oil; (2) That this provision shall be inapplicable where a seller was on May 1, 1942, in the process of renegotiating contracts and had negotiated contracts covering a substantial part of the total volume of his sales during the month of April, 1942, in accordance with a uniform price schedule which does not exceed the prevailing price in the same marketing area; and (3) That notwithstanding the terms of any contract, and regardless of the manner in which the price is expressed, whether in terms of carbon black or in any other way, a seller's maximum price for dry gas used in the manufacture of channel carbon black shall not be increased after June 30, 1944, by the establishment of or increase in a maximum price for carbon black or dry gas unless such seller of dry gas is specifically allowed an increase by written order of the Price Administrator.

(Paragraph (a) amended by Am. 5, 9 F.R. 11,904, effective 10-3-44; and Am. 7, 9 F.R. 13202, effective 11-9-44).

(b) Where a seller had contracts in effect on May 1, 1942, for the sale of dry gas but did not then have a contract with a particular purchaser for dry gas produced from the same source or sources as the dry gas covered by those contracts, the seller's maximum price to that purchaser for deliveries of dry gas shall not exceed the highest price that [fol. 1315] could be charged for such deliveries under (a) to a purchaser of the same class. If the seller had no contracts in effect on May 1, 1942, with purchasers of the same class, then his maximum price shall be determined under (c) below.

(Paragraph (b) amended by Am. 3, 9 F.R. 8187, effective 7-24-44)

(c) A maximum price for deliveries of dry gas established pursuant to paragraph (a) or (b) of this section which is below the level of prevailing prices between the same class of purchaser and seller in the same general producing area may be increased up to such level of prevailing prices by written agreement between the purchaser and seller subject to the following conditions:

(1) The seller or purchaser must submit a written copy of such agreement or contract to the Petroleum Branch of the Office of Price Administration within 10 days after execution thereof together with a statement containing the following information:

(i) The name and address of the seller and purchaser.

(ii) The seller's present maximum price for such production as established under paragraph (a) or (b) of this section.

(iii) The maximum price agreed upon and a statement as to the points (such as well head, pipeline or pipeline terminal) at which delivery is to be made.

[fol. 1316] (iv) The maximum prices of other sellers and purchasers of the same class for dry gas produced in the same general producing area or if the seller is the only producer in the particular area in the nearest area in which similar conditions obtain. The estimated percentage of

total volume moving at each price should be stated and the nature of the facilities used in making delivery to each purchaser should be described.

(2) The Office of Price Administration may require a statement in writing signed by the purchaser or purchasers that they will not institute any proceeding before any governmental agency for an increase in their resale price or prices using the increased cost as the basis of such "proceeding".

(3) If the resale price of the purchaser is controlled by a governmental agency other than the Office of Price Administration, then the purchaser shall at the same time an application is made to said governmental agency for an increase in the purchaser's resale price or at the same time the purchaser is notified that an action has been instituted, report such fact and submit copy of the petition to the Petroleum Branch, Office of Price Administration, Washington, D. C.

(4) The seller may not accept payment for deliveries of dry gas subject to a maximum price determined under this paragraph (c) until 15 days have elapsed after mailing of the report of such maximum price. Within the 15 day period the price so reported shall be subject to adjustment by the Office of Price Administration. Subsequent to this 15-day period such price shall be subject to adjustment by [fol. 1317] the Office of Price Administration. Subsequent to this 15-day period such price shall be subject to adjustment by the Office of Price Administration. Subsequent to this 15-day period such price shall be subject to adjustment at any time upon written order by the Office of Price Administration.

(Paragraph (c) amended by Am. 8, 9 F. R. 13202, effective 11-9-44 and Am. 18, 10 F. R. 12117, effective 10-1-45)

(d) Where a seller is unable to determine his maximum price for dry gas under (a) or (b) above, a tentative maximum price may be set, and the seller shall comply with the requirements of filing as provided in Section 14, paragraph (c), and the tentative maximum price shall be subject to disapproval and change as therein provided.

Effective Date. This Regulation No. 436 shall become effective June 7, 1944. (Revised Maximum Price Regulation No. 436, originally issued June 2, 1944)

(Effective dates of amendments are shown in notes following the parts affected)

Note: All reporting and record keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 27th day of February, 1946.

James G. Rogers, Jr., Acting Administrator.

STATEMENT OF THE CONSIDERATIONS INVOLVED IN THE ISSUANCE OF AMENDMENT NO. 22 TO REVISED MAXIMUM PRICE REGULATION NO. 436

The petitioner in this action requested that *that* the maximum price for condensate produced from the Rodessa Field, Cass and Marion Counties, Texas and Caddo Parish, [fol. 1318] Louisiana be increased from the base period price of $1.20 to $1.30 per barrel.

Evidence submitted by the petitioner reveals that the maximum prices for condensate produced from the five nearest fields in Louisiana and Texas range from $1.30 to $1.40 per barrel and the Administrator is, by this action, establishing a maximum price for condensate produced from this field in line with prices prevailing for this product in the same general producing area.

Issued this 27th day of February, 1946.

James G. Rogers, Jr., Acting Administrator.

(C6052-004) GPO-OPA 14394-p. 9

[fol. 1319]

EXHIBIT No. 81

Guymon-Hugoton Field

Peerless Oil & Gas Company's Cowell #1 Well
Based on Mr. Kenneth Ellison's Testimony on reserves and Lease Value

	MCF	Sales Price per MCF	Gross Revenue
Share of Production	7,040,000	4¢	$281,600.00
Earnings Estimate—30 years			
Gross Revenue	4¢	6¢	10¢
7,040,000 MCF	$281,600	$422,400	$704,000
Expense			
Royalty @ 1/8 of 4¢	$ 35,200	$ 52,800	$ 88,000
Depletion Leasehold (640 Ac @ $50 Ac.)	32,000	$ 32,000	$ 32,000
Depreciation Owell	20,000	20,000	20,000
Gross Production Tax @ 5% of 7/8 of 4¢/6¢ 10¢	12,320	18,480	30,800
Well Operation & Reacidization	7,900	7,900	7,900
Total	$107,420	$131,180	$178,700
Income	174,180	$291,220	$525,300
Return in % of Investment ($52,000)	334.96	560.03	1,010.19
Average Return Per Year	$ 5,806	$ 9,707	$ 17,510

[fol. 1320] EXHIBIT 82

Only Section 6 of this Exhibit was offered. At the time of offering same Section 6 was read into the record, which appears at page 787 of the record, therefore this exhibit is not copied at this point.

EXHIBIT 83

This Exhibit is identical with Exhibit 82. Exhibit 82 is entitled "In the Matter of Mid-Continent Gas Transmission Co.", Docket No. G669 of the Federal Power Commission, while Exhibit 83 is entitled "In the Matter of the Michigan-Wisconsin Pipe Line Company", Docket No. G669 of the Federal Power Commission and reference is made to page 787 of this record where offer of these Exhibits was made.

[fol. 1321] EXHIBIT 84

August 13, 1945.

Registered Mail
Return Receipt Requested

Cabot Carbon Company, Pampa, Texas

Attention: Gene Green

GENTLEMEN:

This letter is written pursuant to and reference is hereby made to Cause CD 194, Order No. 17,359, made by the Corporation Commission of the State of Oklahoma on November 24, 1944, same being entitled, "In the Matter of the Application of Cabot Carbon Company for Permission to Build a Carbon Black Plant in Texas County for the United States Government." We are advised that your carbon plant located in Section 21, Township 3 North, Range 15 ECM, Texas County, Oklahoma, is now completed.

The undersigned is engaged solely and exclusively in the production of natural gas in the Hugoton, Oklahoma, gas field.

The undersigned has drilled, completed and equipped ready for production four wells for the production of natural gas in the Hugoton, Oklahoma, gas field, said wells being described as follows:

Name	Description	Open Flow
Enz #1 Well	Section 29-3N-16 ECM Texas County, Oklahoma	23,980,000

[fol. 1322]

Taylor #— Well	Section 23-3N-16 ECM Texas County, Oklahoma	23,500,000
Taylor #— Well	Section 28-3N-17 ECM Texas County, Oklahoma	25,390,000
Mitch #1	Section 3-2N-16 ECM Texas County, Oklahoma	20,206,000
	Total Open Flow	93,076,000

Upon the assumption that the Corporation Commission of the State of Oklahoma will currently permit the undersigned allowables permitting it to produce ratably from the above described wells and with other producing wells in the Hugoton, Oklahoma, gas field, the undersigned will have for sale and does hereby tender to you in compliance with the above described order 25,769,000 cubic feet of natural gas per day at the price of five cents (5¢) per thousand cubic feet, all in accordance with and under the terms of said order.

The undersigned agrees that it will do and perform all things required by the laws of the State of Oklahoma and the Corporation Commission of said state in connection with the delivery of the gas herein tendered.

Should your company desire further commitment or specification of details for the delivery of the gas, the undersigned will be pleased to have its representative confer with you at your pleasure.

[fol. 1323] Respectfully submitted, Peerless Oil and Gas Company, a Corporation, by Earl Pruet, Its Attorney-in-fact, 1133 First National Building, Oklahoma City, Oklahoma.

CC: Tom McMurray, Secretary, Corporation Commission, State Capitol Building, Oklahoma City, Oklahoma.

[fol. 1324] EXHIBIT 85

RICHARDSON, SHARTEL, COCHRAN & PRUET
1133 First National Building,
Oklahoma City, Oklahoma

January 18, 1946.

Registered — Return
Receipt Requested

Cabot Carbon Company, Pampa, Texas

Attention: Mr. Gene Green

Re: Chester Nash No. 1 Well in Section 20, Township 3 North, Range 16 ECM, Texas County, Oklahoma

GENTLEMEN:

This letter is written pursuant to and reference is hereby made to Cause CD 914, Under No. 17,359, made by the Corporation Commission of the State of Oklahoma on November 24, 1944, same being entitled, "In the matter of the Application of Cabot Carbon Company for Permission to Build a Carbon Black Plant in Texas County for the United States Government." We are advised that your carbon plant located in Section 21, Township 3 North, Range 15 ECM, Texas County, Oklahoma, is now completed.

The undersigned is engaged solely and exclusively in the production of natural gas in the Hugoton, Oklahoma Gas Field.

The undersigned has drilled, completed and equipped ready for production one well for the production of natural [fol. 1325] gas in the Hugoton, Oklahoma, Gas Field, said well being described as follows:

Name	Description
Chester Nash #1 Well	Section 20-3N-16 ECM Texas County, Oklahoma.

Upon the assumption that the Corporation Commission of the State of Oklahoma will currently permit the undersigned allowables permitting it to produce ratably from the above described well with other producing wells in the Hugoton,

Oklahoma, Gas Field, the undersigned will have for sale and does hereby tender to you in compliance with the above order the natural gas producible from said well at the price of five cents (5¢) per thousand cubic feet.

The undersigned agrees that it will do and perform all things required by the laws of the State of Oklahoma and the Corporation Commission of said state in connection with the delivery of the gas herein tendered.

Should your company desire further commitment or specification of details for the delivery of the gas the undersigned will be pleased to have its representative confer with you at your pleasure.

Respectfully submitted, Peerless Oil and Gas Company, a Corporation. By Earl Pruet, Its Attorney-in-fact, 1133 First National Building, Oklahoma City, 2, Oklahoma.

[fol. 1326] EP:FS

CC Tom McMurray, Secretary, Corporation Commission, State Office Building, Oklahoma City, Oklahoma.

[fol. 1327] EXHIBIT 86

GAS PURCHASE CONTRACT

This agreement made and entered into this 5th day of August, 1946, by and between Cities Service Gas Company, a Delaware corporation, hereinafter referred to as "Buyer", and Hrarington & Marsh, a partnership with offices at Amarillo, Texas, hereinafter referred to as "Seller";

Witnesseth:

Whereas, Buyer owns and operates a natural gas pipe line system, for the requirements of which it desires to obtain merchantable natural gas in excess of other gas Buyer has available to it;

Whereas, Seller owns valid gas leases comprising approximately 75,000 acres in the Guymon-Hugoton Field in Texas County, Oklahoma; has drilled several gas wells thereon and intends to drill additional wells thereon; and desires to connect certain of said wells to the pipe lines of Buyer and

sell the allowable gas production therefrom to Buyer in accordance with the terms and provisions of this agreement;

Now, therefore, premises considered in consideration of the Mutual covenants and agreements herein contained, the Buyer and Seller agree with each other as follows:

1. Subject to the terms and conditions and within the limitations hereinafter set forth, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller at the points of delivery specified hereunder, ratably with all natural gas purchased and/or produced by Buyer in the Guymon-Hugoton Field such natural gas as may be produced and delivered from the wells of Seller connected to the pipe lines of Buyer. "Ratably" as [fol. 1328] herein used means in accordance with well allowable lawfully fixed and determined by the Corporation Commission of the State of Oklahoma, and if well allowables shall cease to be fixed by said Commission or other regulatory body having jurisdiction thereover, then in accordance with the "deliverability" of the wells, and the acreage attributable thereto, from which Buyer shall be producing and purchasing gas from time to time.

2. It is recognized and agreed that Buyer will be unable, due to varying operating conditions and the fluctuating demand of its markets, to receive the exact allowable production of Seller's wells for each month as set out in the schedule of allowables issued by said Commission; but Buyer agrees that, by balancing the underproduction and overproduction of well allowables occurring in any month to the best of its ability during the next month, it will endeavor to take such amounts of gas hereunder as will enable seller to have produced from its wells delivering gas hereunder their full ratable share of all production taken into Buyer's pipe lines in said field. The obligation of Buyer to receive, and the obligation of Seller to deliver, the full ratable share of gas from Seller's wells hereunder as above specified, shall be limited to that portion of said wells' respective allowables which can be ratably produced and delivered through the gathering facilities of Seller against the varying pressures in Buyer's pipe line at the points of delivery specified hereunder.

3. The points of delivery for gas purchased hereunder shall be at the end of Buyer's ten (10) inch pipe line near

the center of the south line of Section 25-4-15; at the end [fol. 1329] of Buyer's eight (8) inch pipe line near the center of the south line of Section 13-4-15; at the end of Buyer's ten (10) inch pipe line near the center of the south line of Section 1-4-15; at the end of Buyer's ten (10) inch pipe line near the center of the south line of Section 28-5-16; at a point of connection with Buyer's ten (10) inch pipe line near the center of the south line of Section 29-5-16; at a point of connection with Buyer's ten (10) inch pipe line near the center of the south line of Section 30-5-16, all of said points being in Texas County, Oklahoma. Buyer, at its own expense, shall install, operate and maintain at said points of delivery orifice meters of suitable size and type for the accurate measurement of the gas delivered hereunder. The meters, respective meter readings and charts shall be at all reasonable times accessible to inspection and examination by Seller. The actual points of delivery hereunder shall be at the inlets of Buyer's drips constructed on the inlet side of Buyer's meter settings and Seller shall not be liable to Buyer for any loss, damage or injury resulting from said gas or its use after it leaves such points of delivery.

4. The delivery points specified in the above paragraph are at or near Buyer's present gathering system, which system was designed and constructed to handle gas from Buyer's own wells. Wells from which it is contemplated that gas will be delivered hereunder are indicated generally but not definitely on the map attached hereto; said map being intended to show the delivery points and the wells that will probably be connected during the year 1946. [fol. 1330] Whenever Seller wishes to connect a well hereunder, it shall notify Buyer in writing, giving for each well the name, location, open flow, allowable or estimated allowable production, rock pressure and proposed point of delivery into Buyer's facilities. If, by reason of the volumes of gas delivered or to be delivered hereunder, that portion of Buyer's gathering system transporting Seller's gas in addition to gas from Buyer's own wells is found to be of inadequate capacity, Seller agrees to provide such reasonable pipe line extensions to a new point or points on Buyer's gathering system to be mutually agreed upon which will enable Buyer to receive Seller's gas hereunder in which

event said new point or points shall become the point or points of delivery hereunder. Seller shall have the right to terminate this contract if it does not elect to provide such pipe line extensions. It is understood that when a well is connected by Buyer for delivery of gas hereunder, such well shall remain connected and gas produced therefrom shall be delivered to Buyer hereunder until the termination of this contract.

5. Buyer shall pay Seller for all gas delivered hereunder the price of Four Cents (4¢) per thousand cubic feet, and shall also pay Seller One-half Cent (½¢) per thousand cubic feet on all said gas to compensate Seller for the cost of gathering and delivering such gas, making an aggregate payment of Four and one-half Cents (4½¢) per thousand cubic feet. Should any governmental agency validly fix [fol. 1331] a net price or if Buyer should at any time or from time to time hereafter pay a net price (as that term is hereinafter defined) for gas produced in the Guymon-Hugoton Field and purchased by Buyer from a seller or sellers other than Seller which is higher than the net price at the time being paid to Seller for gas delivered hereunder, then effective with the first delivery of gas to Buyer at such higher net price to another seller or sellers the net price to Seller for gas delivered hereunder shall be adjusted to coincide with the highest net price paid by Buyer to such other or others.

The term "net price" as used herein shall mean the total amount per thousand cubic feet paid by Buyer for the gas delivered by a seller into Buyer's pipe line facilities, less One-half Cent (½¢) per thousand cubic feet, which shall be assumed for the purposes of this adjustment clause to be the gathering charge. In the event Buyer should purchase from any such other seller at a price delivered to Buyer at the wells of such other seller, then such delivered price shall be the net price in such case. It is the intention of this price adjustment provision that the price paid for gas hereunder shall be the highest field price paid by Buyer for gas at the wellhead in the Guymon-Hugoton Field, plus a reasonable gathering charge for delivering gas to Buyer's system in said field, as determined by the price paid by Buyer [fol. 1332] to others than Seller as aforesaid. Buyer further agrees that should it at any time hereafter make new contracts or amend existing contracts for

the purchase of gas produced in the Guymon-Hugoton Field so as to provide therein for a basis of measurement more favorable to the seller or sellers therein than that contained in this contract, or should any valid governmental rule or regulation require Buyer to make such modification in the basis of measurement, then this contract shall thereupon be amended to provide for such more favorable basis of measurement.

6. Buyer shall make payments monthly by check to Seller on or before the 25th day of each month for all gas delivered hereunder during the preceding fiscal accounting month. It is agreed between the parties hereto that this contract shall cover gas produced from Seller's own wells and gas from wells of others for whom Seller shall be authorized to act. It is further agreed that, although Seller's agreements with such others may be other than purchase contracts, payment for all gas received hereunder shall be made by Buyer to Seller and Seller will make all necessary payments to such others and will hold and save Buyer harmless from all claims of such others arising therefrom. The fiscal accounting month shall be from the 23rd day of one calendar month to the 22nd day, inclusive, of the next succeeding calendar month. Buyer shall accompany each monthly payment with a statement showing the gas delivered by Seller and measured through each of Buyer's meters during the fiscal month for which settlement is made. [fol. 1333] Seller may accept such statement, and the payment based thereon, and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly.

7. The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure bas- at sixteen and four-tenths (16.4) pounds absolute pressure per square inch and on a temperature base of sixty (60) degrees Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's law, and that flowing temperature of the gas in the meters is sixty (60) degrees Fahrenheit.

In the event orifice meters are used for the measurement of gas delivered hereunder, coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas

Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computations shall be made in accordance with an approved method, and the monthly average of these determinations shall be used respectively at the close of the billing period for calculating the volume of gas delivered hereunder.

If any meter is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and if the error shall have resulted in an [fol. 1334] error of more than three (3) percent in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to par accuracy to compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last meter test. In no event, however, shall any correction extend back beyond one month from the date the error was first made known by one party hereunder to the other.

8. Natural gas delivered hereunder shall be merchantable gas, conforming to the following specifications:

(a) *Heating Value*—The gas to be delivered hereunder is assumed, but not guaranteed, to have an average gross heating value of not less than one thousand (1,000) B.t.u. per cubic foot. If, in any fiscal month as herein defined, the average gross heating value of such gas shall fall below nine hundred fifty (950) B.t.u. per cubic foot the price to be paid by Buyer to Seller for gas delivered during such months shall be decreased proportionately to the reduction in gross heating value below one thousand (1,000) B.t.u. per cubic foot. Buyer at no time shall be required to receive gas from Seller which has a gross heating value of less than nine hundred (900) B.t.u. per cubic foot. The unit of volume for determining gross heating value only shall be one cubic foot of gas saturated with water vapor at a base temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of thirty (30) inches of mercury.

[fol. 1335] (b) *Sulphur*—The gas shall not contain in excess of one grain of hydrogen sulphide per hundred cubic

feet, and shall not contain in excess of twenty (20) grains of total sulphur per hundred cubic feet.

(c) *Natural Gasoline*—The gas shall be in its natural state as produced, including natural gasoline and all other hydrocarbons therein contained.

(d) *Miscellaneous*—The gas shall be practically free of water, crude oil, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances.

Buyer shall have the right, at its election to discontinue or curtail deliveries of gas hereunder, whenever the quality of the gas does not conform to the above specifications.

9. Seller warrants the title to the natural gas sold and delivered to Buyer hereunder and that Seller has good right and lawful authority to sell the same as herein provided, and Seller agrees to indemnify and save Buyer harmless from any and all suits, claims and liens of whatsoever nature relating to such gas or the title thereto, and agrees that if Seller's title thereto shall at any time be questioned, or involved in litigation, Buyer shall have the right to withhold payments (without interest) during the period of such litigation, or until said title is freed from such question, but only as to the particular property in litigation or dispute, the proceeds payable in respect of the gas produced from such property or until Seller shall furnish to buyer a bond [fol. 1336] conditioned to save Buyer harmless in form and with sureties acceptable to Buyer.

10. This contract shall become effective with the first delivery of gas by Seller to Buyer hereunder and shall continue in force until January 22, 1947, and continue thereafter unless cancelled on such expiration date or on the twenty-second day of any succeeding month by either party giving to the other sixty (60) days' prior notice in writing of such cancellation; provided, however, that such act of cancellation by either party shall not prejudice any rights that Seller may have under the laws of the State of Oklahoma, or under any orders, rules or regulations of duly constituted agencies thereof. After the effective date of such cancellation, each party shall be released from the obligations and provisions of this contract except as to any

payment due Seller by Buyer for gas theretofore delivered hereunder.

11. All of the provisions of this contract are subject to all valid legislation, State or Federal, with respect to the subject matter hereof, and to all valid present and future gas proration and other applicable orders, rules and regulations of duly constituted authorities having jurisdiction.

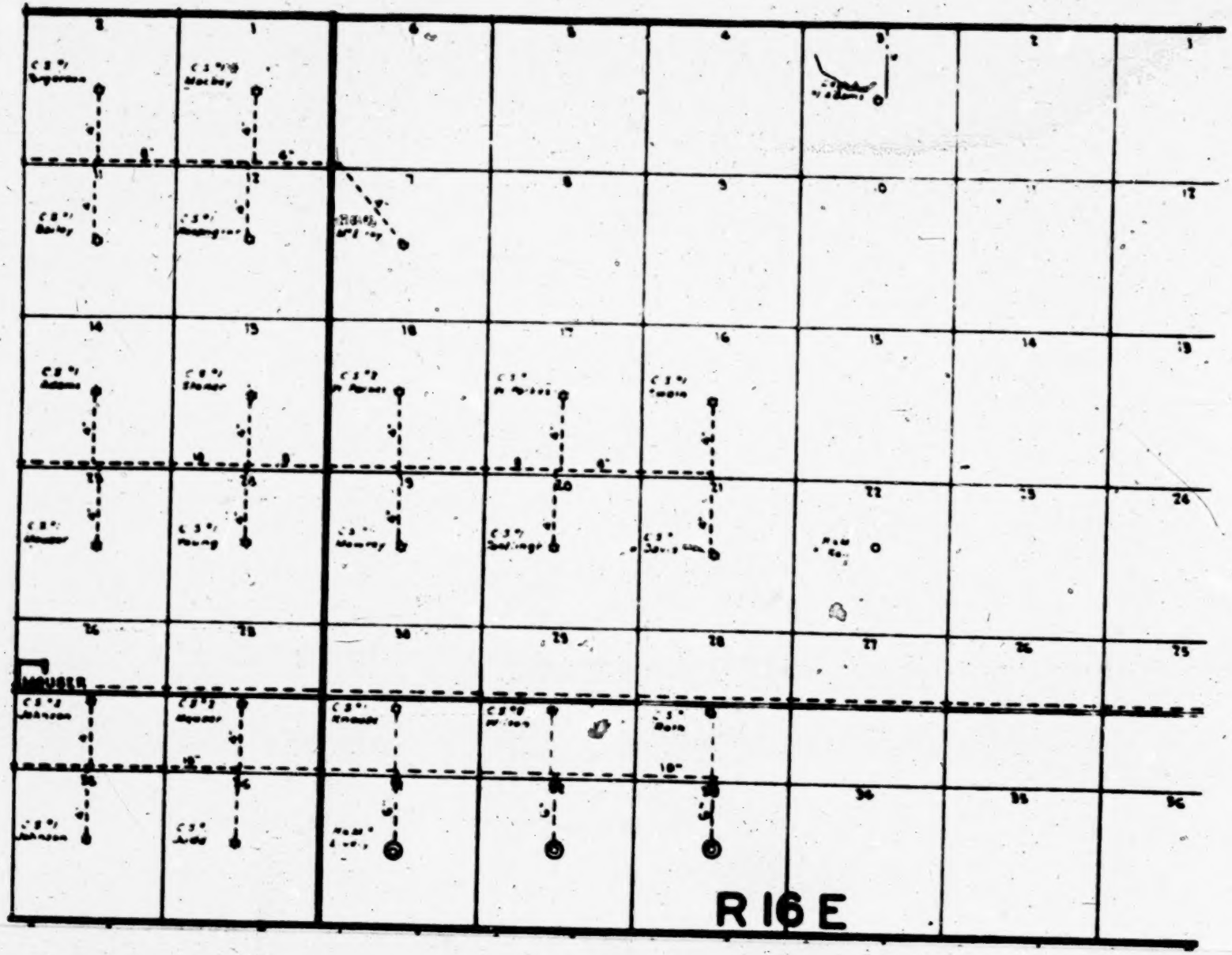
12. This contract and each of its terms shall bind and extend to the benefit of the parties hereto, their respective heirs, successors and assigns.

In witness whereof, the parties hereto have duly executed this contract as of the date herein first above written.

[fol. 1337] "Buyer" Cities Service Gas Company, by Geo. H. Baird, Vice President. "Seller" Harrington & Marsh, by D. W. Harrington. (Seal.)

Attest: George Roth, Assistant Secretary; Stanley Marsh, Jr., Witness.

(Here follows 1 photo, side folio 1338)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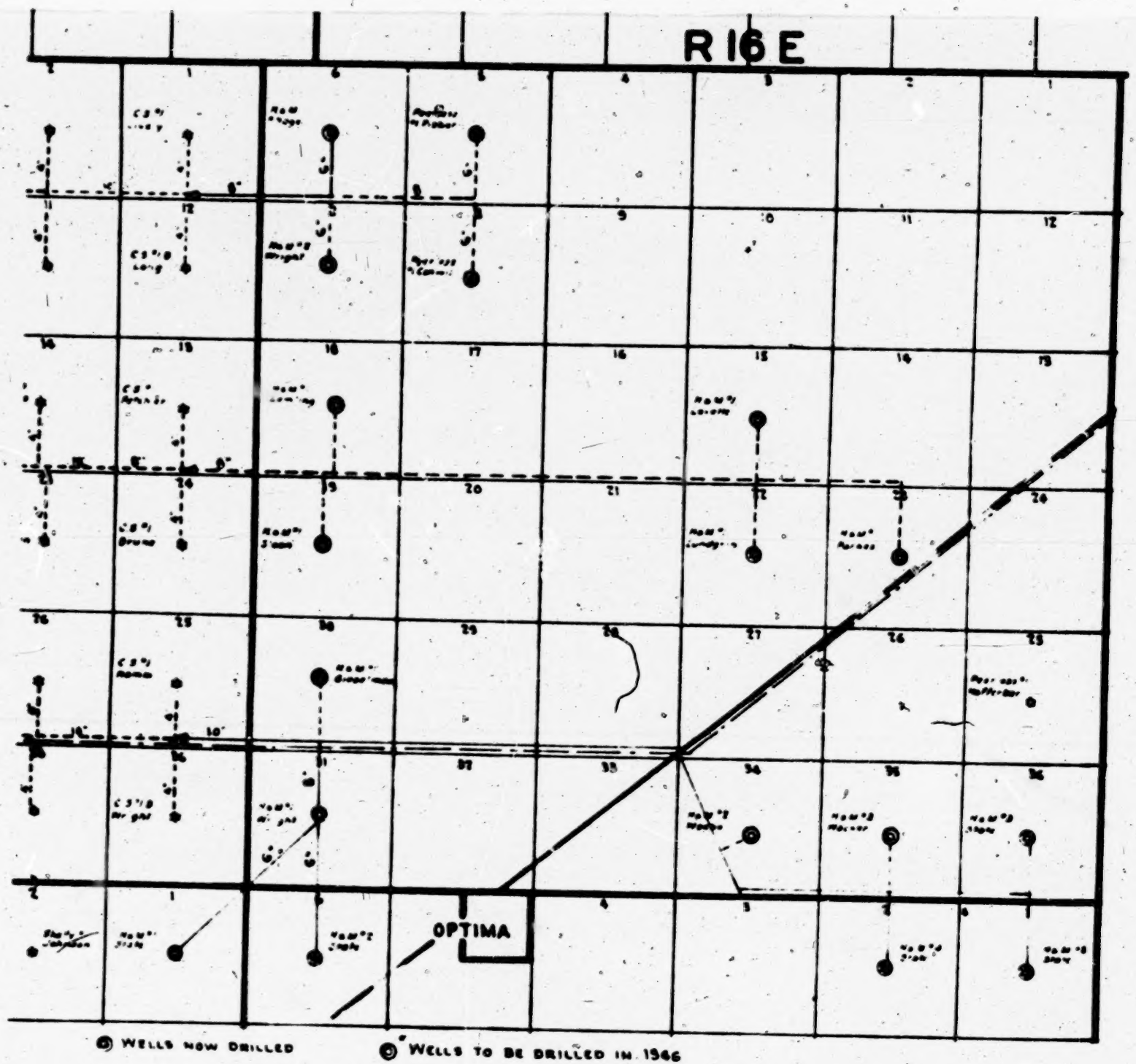
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OPTIMA
WELLS NOW DRILLED
WELLS TO BE DRILLED IN 1946

[fol. 1339] EXHIBIT 87.—Is entitled Request for Findings of Fact and Conclusions of Law, filed in the Office of the Secretary, hereinbefore copied and indexed, so is not here copied.

EXHIBIT 88.—Is entitled Motion to Set Aside Findings of Fact and Conclusions of Law and Substitute Therefor Certain Findings of Fact and Conclusions of Law in the Judicial Phase of Said Case and Render Judgment for Respondent, which was filed in the office of the Secretary on Dec. 9, 1946, is copied as part of the Secretary's files, therefore is not again copied at this point.

EXHIBIT 89.—Is entitled Motion for New Trial, filed in this cause on Dec. 9, 1946, copied in regular order of filing, hence is not again copied at this point.

EXHIBIT 90.—Is entitled Notice of Appeal, filed herein on Dec. 9, 1946, copied in proper order of it's filing, therefore is not here copied.

EXHIBIT 91.—Is entitled Requested Order for Record for Appeal, filed Dec. 9, 1946, copied in regular order as part of the Secretary's file, therefore not again copied at this point.

[fol. 1340] EXHIBIT 92.—Is entitled Application for Supersedeas Bond, filed herein on Dec. 9, 1946, is copied in it's regular order in this record, therefore is not again copied at this point.

EXHIBIT 93.—Under the terms of a Stipulation filed herein on December 20, 1946, copied into this record and made a part thereof, Exhibit 93 is made a part of this record and is as follows:

[fol. 1341]

EXHIBIT No. 93

Cities Service Gas Company

Direct Industrial Sales of 100,000 MCF or over (1945) by Average Sales Price Brackets

	Over 100,000 MCF	Under 100,000 MCF	Cumulative Total	Cumulative Per cent of Total Direct Sales of C. S. G.	
Rowland's Testimony	4¢ to 5¢	.....	19,841	19,841	..
" "	5 to 6	1,445,945		1,465,786	2%
" "	6 to 7	2,671,072		4,136,858	8
" "	7 to 8	3,686,840		7,823,698	14
" "	8 to 9	.....		7,823,698	14
" "	9 to 10	10,678,956		18,502,654	33
" "	10 to 11	15,374,090		33,876,744	60
" "	11 to 12	5,332,399		39,209,143	70
Requested by Pruitt	12¢ to 13¢	2,106,016		41,315,159	73%
" " "	13¢ to 14¢	2,652,734		43,967,893	78
" " "	14 to 15	112,415		44,080,308	78
" " "	15 to 16	4,872,826		48,953,134	85
" " "	16 to 17	.....		48,953,134	85
" " "	17 to 18	1,486,727		50,439,861	89
" " "	18 to 19	105,431		50,545,292	90
" " "	19 to 20	.....		50,545,292	90
" " "	20 to 21	335,025		50,880,317	90
" " "	21 to 22	.....		50,880,317	90
" " "	22 to 23	1,012,739		51,893,056	92

Note: Other sales of less than 100,000 MCF per customer, not listed above; total, 4,564,891 MCF and account for the remaining 8%. The weighted average price for those sales was 13.9 per MCF.

[fol. 1342] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 33006

PHILLIPS PETROLEUM COMPANY, Plaintiff in Error,

v.

THE STATE OF OKLAHOMA, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Cities Service Gas Company, Peerless Oil and Gas Company, The State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, The Texas County Land and Royalty Owners Association, and All Operators, Producers and Takers of Natural Gas in the State of Oklahoma and, Particularly, in the Guymon-Hugoton Field, Defendants in Error

PETITION IN ERROR—Filed February 7, 1947

Phillips Petroleum Company, a corporation, Plaintiff in Error, complains of the Corporation Commission of the

State of Oklahoma (hereinafter called "The Commission") and the other above named defendants in error on account and because of two certain orders made and entered by the Commission under date of December 9, 1946, being Orders No. 19514 and No. 19515 in Cause C. D. No. 1054 then pending before the Commission, wherein and whereby the Commission, upon the application of Peerless Oil and Gas Company, and the petitions of intervention of the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma and the Texas County Land and Royalty Owners Association, ordered that effective from and after January 1, 1947, "no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma for a [fol. 1343] price at the wellhead of less than seven cents (7¢) per thousand cubic feet of natural gas, measured at a pressure of 14.65 pounds absolute pressure per square inch"; and on account and because of Order No. 19702 made and entered by the Commission in said cause under date of February 4, 1947, wherein and whereby the Commission denied an application of Plaintiff in Error to vacate and set aside said Order No. 19514 and as much of said Order No. 19515 as applies to plaintiff in error.

A full, true and complete copy of each of said orders so complained of are hereto attached and made a part of this petition in error.

An original and complete transcript of the record of the proceedings before the Commission and of the evidence upon which said Orders No. 19514 and No, 19515 of the Commission were based, except only the parts thereof omitted as immaterial by stipulation of the Parties, duly certified to by the Commission, is on file in this court in Cause No. 32994, entitled "Cities Service Gas Company, a corporation, Plaintiff in Error v. Peerless Oil and Gas Company, a corporation, et al., Defendants in Error", and by reference is made a part of this Petition in Error.

An original and complete transcript of the record of the proceedings and evidence before the Commission in respect to the plaintiff in error's application to vacate and set aside said Orders No. 19514 and No. 19515 pursuant to which said Order No. 19702 was made and entered, including all subsequent proceedings before the Commission in said cause duly certified to by the Commission, is hereto attached and made a part of this Petition in Error.

[fol. 1344] Plaintiff in error avers that it did, on the 7th day of February, 1947, file with said Commission notice of its intention to appeal to this court from said Orders No. 19514 and No. 19515 and said Order No. 19702 denying plaintiff in error's application to vacate and set aside said Orders No. 19514 and No. 19515.

Plaintiff in Error further avers that the Commission erred in making and entering said Orders No. 19514 and No. 19515 and in making and entering said Order No. 19702 denying plaintiff in error's application to vacate and set aside said Orders No. 19514 and No. 19515, for the reasons and upon the grounds:

1. That the Commission was without jurisdiction to enter said Orders No. 19514 and No. 19515 in so far as they may relate or purport to relate to the plaintiff in error.

2. That no proper application was filed with the Commission for the making of said Orders No. 19514 and No. 19515.

3. That no proper or legal notice of the filing of the application in said Cause C. D. No. 1054 and upon which said Orders No. 19514 and No. 19515, purport to have been based or of the hearings on said application was given to or served on plaintiff in error.

4. That no proper hearing was held by the Commission upon the purported applications pursuant to which said Orders No. 19514 and No. 19515 were entered.

5. That said Orders No. 19514 and No. 19515, in so far as they purport to relate to this plaintiff in error, are not reasonably supported by any competent evidence.

6. That said Orders No. 19514 and No. 19515, in so far as they purport to relate to plaintiff in error, are contrary to the evidence.

7. That the findings of the Commission contained in said Orders No. 19514 and No. 19515 are inadequate in law and are insufficient upon which to base said orders.

[fol. 1345] 8. That said Orders No. 19514 and No. 19515, as applied to plaintiff in error, are unreasonable, unjust, arbitrary and capricious and, if enforced, will result in the confiscation of property of plaintiff in error.

9. That the Commission was without authority of law to make and enter said Orders No. 19514 and No. 19515.

10. That the Commission is without power to restrict the production of gas conditioned upon the amount which the producer receives for the same where the gas is sold at the well in its natural state.

11. That the Commission is without power to restrict the production of gas conditioned upon the receipt of a specified price therefor at the well where the gas is not sold at the well or where the gas is not sold in its natural state.

12. That the Commission is without power to restrict the production of gas conditioned upon the receipt of a specified price therefor at the well when the gas is not sold but is used by the producer.

13. That said Orders No. 19514 and No. 19515 are ambiguous in that it cannot be determined from said orders what is meant by the term "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas", where the gas is not sold at the wellhead or where the gas is not sold in its natural state or where the gas is used by the producer.

14. If said Orders No. 19514 and No. 19515 are intended to apply to a producer who does not sell the gas produced at the wellhead, but gathers and sells the gas at a point other than the wellhead or otherwise uses the gas, the orders fail to specify any formula whereby it can be determined whether such gas is taken out of the producing structures or formations "at a price, at the wellhead, of less than 7¢ per thousand cubic feet".

[fol. 1346] 15. That said Orders No. 19514 and No. 19515 or any statute or statutes which purport to authorize such orders, as applied to plaintiff in error, violate Sections 7 and 15 of Art. II of the Oklahoma Constitution and Sections 8 and 10 of Art. 1, and the 5th and 14th Amendments of the Constitution of the United States.

16. That said Orders No. 19514 and No. 19515 will not result in the prevention of waste, either physical or economic, and will not result in a greater recovery of gas from the Guymon-Hugoton Field, and will not protect the correlative rights of the several producers and owners in said

field, but, on the contrary, said orders will result in great and irreparable physical and economic waste and in the violation of the correlative rights of the producers and royalty owners in said Guymon-Hugoton Field.

17. That said Order No. 19702 is not supported by any competent evidence.

18. That said Order No. 19702 is contrary to the evidence.

19. That said Order No. 19702 is contrary to law.

Wherefore, plaintiff in error prays that said Order No. 19702 denying plaintiff in error's application to vacate and set aside said Orders No. 19514 and 19515 be reversed, set aside and held for naught, and that judgment be entered herein in favor of plaintiff in error and against the Corporation Commission of the State of Oklahoma and all other defendants in error, vacating, setting aside and holding for naught said orders No. 19514 and 19515, in so far as they may relate to plaintiff in Error, and that plaintiff in error be restored to all rights and privileges that it has lost by the entry and the rendition of the orders herein complained of, and for such other and further relief as to the court may seem just and proper.

[fol. 1347] Phillips Petroleum Company, by Don Emery, Rayburn L. Foster, R. B. F. Hummer, R. M. Williams, Harry D. Turner, Its Attorneys.

(Affidavit of mailing omitted in printing)

[fols. 1348-1351] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. CD-1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent;

STATE OF OKLAHOMA on Relation of Commissioners of the Land Office of the State of Oklahoma and Texas County Land and Royalty Owners Association, Intervenors

TRANSCRIPT ON APPEAL TO SUPREME COURT

(Case No. 33006)

[fol. 1352] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 1054

PEERLESS OIL & GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent;

STATE OF OKLAHOMA on Relation of Commissioners of the Land Office of the State of Oklahoma and Texas County Land and Royalty Owners Association, Intervenors

APPLICATION OF PHILLIPS PETROLEUM COMPANY TO VACATE ORDERS No. 19514 AND No. 19515—Filed January 17, 1947

Comes now Phillips Petroleum Company, a corporation, hereinafter referred to as "Applicant", and respectfully makes application to this honorable Commission to vacate and set aside Order No. 19514, and so much of Order No. 19515 as applies to Applicant, both entered in the above numbered cause on the 9th day of December, 1946, wherein the Commission directs that on and after January 1, 1947, no gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch." In support of said motion Applicant alleges:

1. Applicant is and was prior to January 1, 1947, and for more than a year thereto, a substantial producer of gas in said Guymon-Hugoton Field. Applicant owns oil and [fol. 1353] gas leases on approximately 49,278 acres of land in said field on which it has at the present time drilled and completed 82 producing gas wells, of which 77 are presently connected and 5 are unconnected. Under the general allocation schedules of the Commission, the current allowable production from said wells for the month of January, 1947, is substantially in excess of 35,000,000 cubic feet of gas per day. Applicant owns oil and gas leases on approximately 138,752 acres of undeveloped por-

tions of said field on which it contemplates the drilling of a number of additional wells in 1947 and subsequent years.

2. Applicant is neither a common carrier nor a common purchaser of gas in the Guymon-Hugoton Field and purchases, transports or handles no gas except that produced from wells owned and operated by Applicant.

3. Except for the occasional sale of a negligible quantity of gas to other operators or drilling contracto-s as fuel for well drilling purposes, Applicant sells no gas produced from said field in the State of Oklahoma and sells no gas produced from said field elsewhere in its raw state, but instead gathers said gas through its own gathering system to a central point in the State of Texas where said gas is commingled with gas from other sources in Texas and processed in Applicant's own gasoline plant for the extraction of the natural gasoline and other liquid hydrocarbon content thereof, uses a portion of the residue from said commingled gas and sells the remainder. The liquids extracted from said gas are transported to Applicant's "central [fol. 1354] treater" located near Borger, Texas, where said liquids are commingled with liquids extracted from gas processed in other gasoline plants and are fractionated into the various grades of natural gasoline, butane, propane and other products. Some of said liquid products are used by Applicant in the manufacture of motor fuel, aviation gasoline, butadiene and various other products and some are sold by applicant.

4. Under date of April 5, 1943, Applicant entered into a contract with Panhandle Eastern Pipe Line Company whereby Applicant, for the entire life of its oil and gas leases thereon, dedicated to the performance of said contract 175,000 acres of land located in Texas County, Oklahoma, and Sherman and Hansford Counties, Texas, and agreed, subject to certain reservations of gas to be used by Applicant, to sell and deliver to Panhandle Eastern all of the gas produced from such dedicated acreage. That part of the acreage dedicated under said contract and located in Texas County, Oklahoma, totals approximately 115,042 acres. Under the terms of said contract Applicant agreed to develop the said dedicated acreage and to gather the gas produced therefrom and deliver it to Panhandle Eastern at a central delivery point, which said delivery point by

agreement is located in Hansford County, Texas. By said agreement Applicant reserved the right, within certain limitations specified in said contract, to extract natural gasoline and other liquid hydrocarbons from said gas prior to the delivery of such gas to Panhandle Eastern at [fol. 1355] said delivery point, and, pursuant to said reservation, Applicant constructed and is now operating a natural gasoline plant in Hansford County, Texas, near said point of delivery in which Applicant processes all of the gas produced and gathered from all of said dedicated acreage, including the acreage located in the State of Texas as well as the acreage located in the State of Oklahoma. Subject to certain provisions stated in said contract, the price to be paid by Panhandled Eastern to Applicant for all gas delivered by Applicant to Panhandle Eastern under the terms of said contract at said central delivery point, is fixed by said contract at 4¢ per M. C. F. and measured at a pressure of 16.4 pounds per square inch during the first five years after date of first delivery with certain increases in price thereafter. Panhandle Eastern Pipe Line Company is a company engaged in the transportation and sale of natural gas in interstate commerce, and the gas delivered to it by Applicant under the terms of said contract is transported by Panhandle Eastern Pipe Line Company from Hansford County, Texas, to Detroit, Michigan, and intermediate points along its pipe line and is sold for light, heat and power purposes, all of which are useful and non-wasteful purposes. No waste exists with respect to the production, handling, processing, sale and ultimate utilization of the gas produced by Applicant in Texas County, Oklahoma.

5. If Applicant under the terms of said Orders No. 19514 and No. 19515 of this Commission is prohibited from produc- [fol. 1356] ing its wells unless and until it can sell the gas therefrom at the wellhead under the conditions and at a price other or different than it has contracted to sell said gas to said Panhandle Eastern Pipe Line Company, the enforcement thereof will cause Applicant to suffer great and irreparable injury and damage, as follows: (a) Applicant will be required to shut in its wells and leave them shut in because Applicant has no way to compel the Panhandle Eastern Pipe Line Company, an out-of-state purchaser, to pay any more for said gas than is provided in said

contract; (b) that Applicant has no other market for its said gas, but that if it did it would be unable to produce and sell the same to such other market because of its contractual obligations to said Panhandle Eastern Pipe Line Company; (c) that to shut in its well would jeopardize Applicant's leases through failure to produce gas therefrom and would further result in drainage of gas from under Applicant's property by offset producers who are so situated as to have a market for their gas at a price and under conditions meeting the requirements of said order, thereby permitting such offset producers to produce their wells.

6. The orders entered herein on December 9, 1946, are improper, unwarranted and illegal for the following reasons:

(a) The Commission is without power to restrict the production of gas conditioned upon the amount which the producer receives for the same where the gas is sold at the well in its natural state.

[fol. 1357] (b) The Commission is without power to restrict the production of gas conditioned upon the receipt of a specified price therefor at the well where the gas is not sold at the well or where the gas is not sold in its natural state.

(c) The Commission is without power to restrict the production of gas conditioned upon the receipt of a specified price therefro at the well when the gas is not sold but is used by the producer.

(d) The orders are ambiguous in that it cannot be determined what is meant by the term "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas", where the gas is not sold at the wellhead or where the gas is not sold in its natural state or when the gas is used by the producer.

(e) If the orders are intended to apply to Applicant in the situation described above with respect to the transaction between Applicant and Panhandle Eastern Pipe Line Company, the order fails to specify any formula whereby it can be determined whether such gas is taken out of the producing structures or formations "at a price," at the wellhead, of less than 7¢ per thousand cubic feet."

(f) If the orders are intended to apply to Applicant in the situation described above with respect to the transaction between Applicant and Panhandle Eastern Pipe Line Company, and if by said order it is intended that Applicant be required to pay its royalty owners as though it had sold [fol. 1358] said gas at 7¢ per M.c.f. at the well, said order is beyond the power of the Commission.

(g) Said orders or any statutes purport to authorize such orders, as applied to the operations of Applicant, violate Sections 7 and 15 of Article II of the Oklahoma Constitution and Sections 8 and 10 of Article I and the 5th and 14th Amendments of the United States Constitution.

(h) The findings of the Commission are insufficient upon which to base said orders.

(i) The orders are not supported by any competent evidence.

(j) No proper notice was given of the filing of the application or of the hearing thereon as by law provided.

(k) Said orders will not result in the prevention of waste, either physical or economic, and will not result in greater recovery of gas from the field and will not protect the correlative rights of the several producers and royalty owners but, on the contrary, said orders will result in great and irreparable physical and economic waste and in the violation of the correlative rights of the producers and royalty owners in said Guymon-Hugoton Field.

Wherefore, Applicant respectfully prays: That this application be set for hearing at as early a date as possible under the law; that due notice of said hearing be given as by law provided; that upon a hearing of said application, the Commission make and enter an order vacating and setting aside said Order No. 19514 and so much of Order [fols. 1359-1360] No. 19515 as applies to Applicant; that if the Commission refuses to vacate and set aside said orders, that it then make an order amending, modifying and supplementing said Orders, excluding from their terms and provisions the production of gas not sold in its natural state, or where not sold at the well clarifying said orders in their application to the production of gas not so sold; that

applicant be granted such other or further relief as may be found proper in the premises.

Phillips Petroleum Company, by Don Emery, Rayburn L. Foster, R. B. F. Hummer, R. M. Williams, Harry I. Turner, Its Attorneys.

[File endorsement omitted.]

[fol. 1361] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER SETTING CAUSE FOR HEARING—January 17, 1947

Now on this the 17th day of January, 1947, the Corporation Commission of Oklahoma being in Executive Session, there comes on for consideration the above styled and numbered application.

It appears that this is a matter that should be set for hearing as soon as possible and that January 31st, 1947, is the first available date on the calendar.

ORDER

It Is Therefore Ordered that this cause be and the same is hereby set for hearing in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma on the 31st day of January, 1947, at 10 o'clock, a.m., and that notice thereof be published as required by law.

Done and Performed this the 17th day of January, 1947.

Corporation Commission of Oklahoma, Reford [fols. 1362-1363] Bond, Chairman; Ray O. Weems, Vice-Chairman; Ray O. Jones, Commissioner.

Attest: Tom McMurray, Secretary. (Seal.)

[fol. 1364] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF HEARING—Filed January 17, 1947

To Peerless Oil and Gas Company, Cities Service Gas Company, Commissioners of the Land Office of the State of Oklahoma, Texas County Land and Royalty Owners Association, Cabot Carbon Company, Southwestern Public Service Company, Republic Natural Gas Company, Panhandle Eastern Pipeline Company, and All Others Operators, Producers, Takers and Purchasers of Gas in the Guymon-Hugoton Field in Texas County, Oklahoma, and All Other Land Owners, Royalty Owners and Owners of Other Mineral Rights in and to Said Field:

Notice Is Hereby Given:

That Phillips Petroleum Company, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, [fol. 1365] did on the 17th day of January, 1947, file with the Corporation Commission of the State of Oklahoma on application to vacate or amend Order No. 19514 and so much of Order No. 19515 as applies to said applicant, both entered in the above numbered cause on the 9th day of December, 1946, wherein the Commission directed that on and after January 1, 1947, no gas should be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

That said application has been set for hearing before the Corporation Commission at its court room in the State Capitol Office Building at Oklahoma City, Oklahoma, at 10 o'clock on the 31st day of January, 1947, at which time and place all those to whom this notice is addressed and any and all other persons who claim to be affected by said Orders No. 19514 and 19515, or claim that they will be affected by the granting or denial of said application of Phillips Petroleum Company to vacate or amend said orders, shall have the right to be present and to offer

evidence and be heard either in support of or opposition to the application so filed or in regard to any other matter or thing pertaining thereto.

Dated this 17th day of January, 1947.

Corporation Commission of the State of Oklahoma, by (Signed) Reford Bond, Commissioner; Ray O. [fols. 1366-1367] Weems, Commissioner; Ray C. Jones, Commissioner. (Seal of Corporation Commission of Oklahoma.)

(Signed) Tom McMurray, Secretary.

[File endorsement omitted.]

[fols. 1368-1370] AFFIDAVIT OF PUBLICATION

STATE OF OKLAHOMA,
Oklahoma County, ss.:

Arta Simpson, of lawful age, being duly sworn on oath, deposes and says: That she is the Principal Clerk of the Daily Law Journal-Record, a newspaper of general circulation in the State of Oklahoma and printed at Oklahoma City, Oklahoma. That the attached notice was published in all regular editions of said newspaper on the following dates:

January 18, 1947.

(Signed) Arta Simpson.

Subscribed and sworn to before me this 18th day of January, 1947. Kathlyn Altmiller, Notary Public. My Commission expires January 18, 1950, Publisher's Fee 7.90. (Seal.)

[Notice omitted in printing.]

[fol. 1371] BEFORE CORPORATION COMMISSION OF OKLAHOMA

Reporter's Transcript of Hearing

On the 31st day of January, 1947, said application came on for hearing before the Corporation Commission of

Oklahoma, at the Court Room of said Commission in the Capitol Office Building, Oklahoma City, Oklahoma, with Chairman Reford Bond, Vice-Chairman Ray O. Weems and Commissioner Ray C. Jones, sitting; whereupon the following proceedings were had:

[fol. 1372] APPEARANCES:

R. M. Williams and R. B. F. Hummer for Phillips Petroleum Co.; Earl Pruet for Peerless Oil & Gas Co.; Floyd Green for Corporation Commission.

[fol. 1373] OFFERS IN EVIDENCE

Floyd Green: I want to offer exhibits one to four inclusive, one being the application, two, the order setting for heading and three, notice and four, affidavit of publication.

Chairman Bond: Received.

(The above exhibits, with all other exhibits introduced are attached at the close of this record.)

COLLOQUY

Mr. Williams: This application asks to set aside certain provisions of order Number 19915 which relates only to Peerless and Cities Service Gas Company in a previous hearing and before this Commission in C. D. 1054 in the price fixing case.

Mr. Green: They object to paragraph four which reads as follows:

[fol. 1374] Floyd Green: They have no objection to strike or modifying order number 19915 and strike paragraph four and there is no reason why it could or should not be stricken, then all that is left in that application is modifying the price fixing order throughout the field.

Chairman Bond: It's like taking money from Peter to pay Paul.

Floyd Green: We don't need it in this order because it will be disposed of between Peerless Oil and Gas Company and Cities Service Gas Company.

Chairman Bond: If its surplus and useless and it doesn't mean anything, if its the same language what difference does it make if your are bound by it.

Floyd Green: They are bound by order number 19514, what I am trying to do is fix it so the hearing can be held on the main order they have filed.

Chairman Bond: If we strike it from one order, what effect does it have on that?

Floyd Green: That is a dispute between Peerless and Cities Service.

Chairman Bond: Yes there is a dispute between them.

Earl Pruet: I didn't realize that it would be effected.

Chairman Bond: If you strike it, it won't be there to be attacked, it will be eliminated.

Earl Pruet: Personally I have no objection to taking it out.

Chairman Bond: What does the other people say?

[fol. 1375] Floyd Green: That is Phillips.

Mr. Williams: The paragraph is general in its language and that particular order is applicable to the producers in the field. It causes Phillips Petroleum Company to be involved in phases which is intended for Peerless vs. Cities Service. If that is stricken then other producers will then be eliminated from that particular dispute.

Chairman Bond: You are eliminated from that particular dispute and still bound by the price fixed by the Commission.

Mr. Williams: That is correct, but it allows us to raise the issue only in the phase that involves us and not in this private order number 19915, that is my understanding that 19915 was intended to apply to only Peerless and Cities Service and the other for producers generally.

Chairman Bond: The statutes say that the Commission has jurisdiction where there is a dispute and the other order was written because no particular statute applies and it serves and gives jurisdiction and the other specifically states the dispute, in my opinion it is a question for the Supreme Court.

Mr. Williams: The other order includes the same findings with respect to the dispute so by eliminating order number 19915 you could not——

[fol. 1376] Chairman Bond: Why couldn't you by elimination from that without striking any of the Commissions order?

Earl Pruet: Personally we think it is an order only for Peerless and Cities Service.

Chairman Bond: Why can't they take that position then?

Earl Pruet: That is what I first thought.

Chairman Bond: The commission doesn't want to be in the position of striking part of its order and have it fall then. I would rather hold that the order doesn't apply to Phillips.

Mr. Williams: So long as the order is made clear it doesn't apply to the applicant in this matter, then its not important concerning that paragraph.

Chairman Bond: Not unless you get in there and go in and buy property, or own any property where you would be brought into the litigation.

Mr. Williams: But by striking that paragraph it would not change it?

Earl Pruet: It would not as I see it.

Chairman Bond: It would not change it as to you, but it might as to someone else, it might change the effect of that order.

Floyd Green: Your objection is that it is in both orders and the testimony was the same, it doesn't make any difference whether you attack this order (indicating by holding up order).

[fol. 1377] Earl Pruet: The only part that you could attack would be that one paragraph.

Chairman Bond: As far as the Commission is concerned we are interested in making that price stand up and you will have to attack both orders.

Mr. Williams: The applicant has no objection to attacking both orders.

Chairman Bond: The Commission made them and we are going to make them stand up.

Mr. Williams: May I inquire of the Commission, before we enter upon the introduction of testimony that if a statement would be of any advantage to the Commission?

Chairman Bond: Yes it would.

Mr. Williams: May I say that the applicant in this hearing, the Phillips Petroleum Company is a substantial producer of gas in the Guymon Hugoton Pool. We are not a purchaser of gas we are not a transporter of gas, we are only in the status of being a producer of gas. As a producer of gas the applicant will be happy to receive seven cents for its gas because the production of gas and selling it is our business in that pool and any additional income we can receive of course is that much advantage to the applicant. The applicant in this case is confronted with

a two fold obsticale. One is this question. Seriously, the legal authority of this Commission to attack the problem that has been attacked, namely the orders to which the [fol. 1378] present application is added. One question is to the legality of the orders, as a statement made a few moments ago, that is our case, it is true that there is no statute to authorize this. The question has been thoroughly argued in the Cities Service case and I won't go into that.

Chairman Bond: It-s been argued but the Commission will be glad to hear from you because we have confidence in your legal knowledge.

Mr. Williams: If you do not care to go into it, we will not, and impose upon this commission to that extent, and in view of your honors request enter into the discussion of our phase of the matter. I will outline the position of the applicant from the judicial stand point. There is one obsticle, if the Commission is without legal authority, pending the time of the determination nothing will result but confusion and possible litigation and other difficulties and tend to have an invalid order. The second situation is our factual presence in the field and the effect of the order is drawn no- only on this applicant and other producers in like position, the orders as I interpret them are directed against producers and not purchasers. They provide that a producer in the pool shall not produce gas from a formation except to sell at a price of seven cents a thousand cubic feet—14.65 pounds per square inch absolute. Although that language to- is a little ambigious except that you shall not produce it at a price and let [fol. 1379] us assume that it is to mean that a producer is to sell it for seven cents per thousand cubic feet at a pressure based on 14.65 pounds meaning that if a producer is unable to sell it at the wellhead at a price named in the order the producer can not produce his wells. The situation of Phillips Petroleum Company is it sells no*t* gas in Texas County, Oklahoma it sells no gas at the wellhead, it sells no gas in its raw state. Phillips Petroleum Company is a producer, produces its wells, gathers its own gas to a central point in the State of Texas where the gas is processed and is first com-ingled with large volumes of gas from Texas and its com-ingled state is processed in a gasoline plant and after the gas is processed the by products of that processing operation are then disposed of in various manners. There is no gas in the state which it is produced by a refined product is

sold in Texas to Panhandle Eastern Pipe Line Company. For that gas under contract to which the applicant has, the applicant has sold for the base price of four cents and I am speaking of the residue gas and the gas is now sold and at four cents with certain intriments due to enrichment that is 4.67 cents per thousand cubic feet for that gas, the liquid by products of that operation are taken in a raw step to a central treater near Borger Texas and then they are refined and made into 26.70 gasoline and the excess butane and propane is cut and these various products enter into this. They are all moved into the central treater and refined for sale [fol. 1380] in other products. The price fixed by the Commission is gross and does not take into consideration the gathering system or processing system, the gross receipts of the by products of the gas make an unequal price fixed by the Commission. This applicant has no market except to which I refer, for gas we have no market to which we can turn this gas and receive seven cents, our market is to Panhandle Eastern, that is a dedicated acreage in Oklahoma and Texas to which we have obligated ourselves, if the Commission of Oklahoma continues this order in effect and Panhandle Eastern refuses to pay us a price for the products in equal relation you see our position. Phillips Petroleum Company is still obligated to Panhandle Eastern for the Texas property which means that the Oklahoma property will be shut in for want of market, suppose we still find a market, we are bound to Panhandle Eastern, dedicating that acreage to them, and we could not find another market. We have canvas-ed such a situation for markets. We are one of the pioneers as to the market and there are a number of sales in that area and in trying to get the best amounts that we could for gas we dedicated this acreage to Panhandle Eastern. I say that the evidence will show that the present facilities out in the field are as I have stated to you and Cities Service are the major purchasers, their facilities are operating at capacity, hence if we were to find another market other than the Panhandle Eastern it will require additional facilities and the estimated — required to take the [fol. 1381] volume of gas being produced from Phillips from one to two years to install, and be under order of this Commission. Phillips Petroleum Company will be required to shut in its wells and cease to produce from one year to two years time, during that time our leases will be in jeopardy

from drainage, then there will be before this Commission, correlative rights. During this period of time, the producer will have no *auturnative* and during that time will be deprived of his legal rights, he has to take his own gas and as far as his own manufacturing, because of that transaction there is no sale involved. The order makes no provision for the relationship of the gathered products or price of manufactured products, the order doesn't recognize such a right, it has no provision whereby we can continue to carry out our agreement with Panhandle Eastern. This Commission knows that it has quite a complicated method and it involves many as-umptions, we do not know whether we are complying or not complying with the order under this set of facts. The applicant has no *auturnative* except to come to this Commission and call your attention to the facts that the order was drawn so applicant and other producers in the same circumstances will be caused great serious injury and cannot comply with the terms of the order without having serious injury done us. I am sure that the Commission did not have the facts before you when the order was entered, that is whey we are here.

[fol. 1382] Chairman Bond: You have made a very different argument than that made by Republic and Peerless or Cities Service.

Mr. Williams: That is the reason of our application to show you conditions that you are not familiar with. Our current allowable for January is possibly forty-five million cubic feet of gas per day which is one-seventeenth of the fields current outlet so you can see the magnitude of the seriousness of this order.

Chairman Bond: Is there anyone in strking distance of you that you can force to take your gas, like Peerless?

Mr. Williams: The only purchaser is Cities Service and their facilities at the present time are being loaded to maximum capacity and another thing involved is the gathering of our gas or gathering systime is involved, with the view of going south to the processing plant in Texas in that system we have two million seven hundred dollars is the correct figure our engineers say and they are present here today, for us to reverse the system so as to deliver the gas nouth instead of *sout*, that will cause an additional investment of approximately one million dollars.

Chairman Bond: Would that order of the Commission have any effect on the contract, would the fact that the Texas [fol. 1383] contract has reference to the Oklahoma gas or would that contract be subject to the Commissions order, regardless of where it is delivered?

Mr. Williams: I think that the obligations of the contract with respect to gas from Oklahoma would probably be subject to any valid order made by this Oklahoma Commission. May I add this word to the Commission, your order is not directed against the purchaser but against the producer and the only effect is, you shut in your wells unless you find a purchaser that will pay you seven cents, it so happens that it says that unless you pay seven cents we will shut you off, because right across the state line in Texas we have a substantial area and they will say to us, you deliver our gas at four cents and get it wherever you will out of the dedicated area. Our only *autu*rnative will be to take it out of Texas and cause drainage in Oklahoma, and at the same time, the Oklahoma wells will have to be shut in because the Oklahoma Commission will not free the acreage from the Panhandle Eastern contract. That is the situation we are now in. I assume that the Commission when its order was made, did not have in mind and did not intend to say that a producer with forty-five million cubic feet a day allowable must shut in the wells, and that is why we came here to give you the facts.

Chairman Bond: Mr. Pruet you asked that the price of gas be fixed at the mouth of the well and you asked that [fol. 1384] Cities Service connect and take gas. The Commission made that order, are you interested in this order here?

Earl Pruet: I think that the attack goes to the whole field order, that is why I am interested. I am not interested in their gas. The attack that they have made here or such an attack goes to the whole guts of the field order. You make it apply to only one purchaser it isn't a conservative measure at all as I understand it. The purpose of this order, as I understand it, is to fix the value of the gas and that unless retaining so much you can't take it out of the producing formations. The Commission has delegated to the power of transportation of natural gas in Interstate Commerce, it has delegated and got absolute power of the mining process that we have and this Commission has always been

considered in those things over the Supreme Court of the United States. It will do this for example: Cities Service has gas that it takes from its own lease. This order says [fol. 1385] to the world, "You can't take gas out of this Field at less than seven cents at the wellhead", and this order applies to all gas taken out of the Field,—I don't like to appear here in opposition to Phillips Petroleum Company, because, I don't think, as far as my client is concerned, —well, we don't have a dime's interest in it, but the attack they make, as I see it, goes to the whole guts of the order and the whole program and if they are exempted then the Commission will have to exempt Cities Service and you will have to exempt Cabot Carbon Company and all the others and it will result in disagreement between the royalty owners and Phillips Petroleum Company and the royalty owners and other people. I think to do so would destroy the order, and, "By the Grace of God", as somebody said, I expect to do my utmosf my dead, level best, to see, to make it stand up. If they had come in the trial of this case and presented to the Commission the facts and figures they would now present to the Commission we would now have a different set of circumstances, probably,—they stayed out until they saw what kind of an order they could get, and when they got one they thought might hurt them they come in here and object. I say they should all have been in here, operators and all, to try to help, to cooperate and try to solve this problem.

Chairman Bond: Suppose the Commission fixes the price of gas at seven cents and suppose that order was valid and binding and suppose Phillips had wells, a number of wells [fol. 1386] in the Field and they couldn't dispose of the gas, and suppose their wells were draining other properties and they couldn't prevent it?

Mr. Pruet: Well, if they had no market, the chances are they wouldn't drill any wells.

Chairman Bond: Suppose they can't dispose of their property, under the order of the Commission, and other operators would drain them,—is their remedy simply to go out and find a market for their gas.

Mr. Pruet: Well, we might shut them down until everybody has a fair shake, ratttle and roll. That's what we did in the Republic case. I say, if Phillips comes in here and shows that they have to shut down, that Panhandle Eastern

won't take their gas and that they have made an application to the Federal Power Commission to get seven cents at the wellhead and that all of those things have failed, then that would be a different matter. It's just supposition upon supposition and in all seriousness I will say that I firmly believe that if the Commission exempts one of these people it will have to exempt everybody.

Mr. Floyd Green: My thought is this,—that it is the duty of this Commission to conserve natural resources, and then to protect correlative rights, and, if you are going to set aside part of this order then you may as well set it all aside. You can't have somebody out there taking gas at four cents, another at five cents and somebody else at seven cents. If we are going to have a price fixed at seven cents it will have to apply to everybody.

[fol. 1387] If we are going to fix a price for gas in that Field it will have to apply to everybody who takes gas from that Field.

Chairman Bond: It must be uniform.

Mr. Green: It must be uniform.

Mr. Williams: I want to correct a statement I made. I said our allowable, our current allowable for January was one-seventeenth of the pool allowable,—it is one-seventh instead of one-seventeenth. And let me say this,—I didn't intend, at this time, to argue the case,—the Commission has asked for argument upon the law, and I think it would be better to present our evidence at this time,—but I don't want, by my silence, to be understood as conceding anything.

Testimony was then offered, as follows:

Charles W. Binckley, a witness for the Applicant, being duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. State your name.
A. Charles W. Binckley.
Q. Where do you reside?
A. I live at Bartlesville.
Q. What is your occupation or profession?

A. I am a mechanical engineer, by training.

Q. With what Company are you associated?

A. Phillips Petroleum Company.

[fol. 1388] Q. In what capacity are you employed?

A. I am specially in charge of natural gas production and natural gasoline and natural gas department.

Q. State briefly what your educational qualifications are and your experience——

Mr. Floyd Green: So far as I am concerned his qualifications are admitted.

Chairman Bond: If there is no objection, let the record so show.

Mr. Williams: I believe we would like to have the witness answer.

Chairman Bond: Very well, you may answer the question.

A. I received a Bachelor of Science Degree in Mechanical Engineering from the University of Oklahoma, in the spring of 1936,—since that time I have done research work, including reserves of oil, natural gasoline and gas. During the last five years I have been very closely associated in gas production,—general gas production problems, various problems along the line of general gas production in different areas of the Mid-Continent.

Q. Are you acquainted with the area known as the Guymon-Hugoton Pool, in Texas County, Oklahoma?

A. Yes, sir.

Q. Does your Company, the Phillips Petroleum Company, own leases in that Field?

A. Yes; Phillips Petroleum Company has many leases in [fol. 1389] the Guymon-Hugoton Field in Texas County, Oklahoma.

Q. How many acres does your company have under lease in Texas County, Oklahoma? In that pool?

A. The Phillips Company has approximately 183,000 acres under lease in Texas County.

Q. Is part of that acreage developed?

A. Yes.

Q. How many acres are developed?

A. Approximately 149,000 are developed, as of January 1, 1947.

Q. You mean by "developed", that wells have been drilled on that many acres?

A. Yes.

Q. How many wells does your Company have in that area?

A. A total of 85 wells as of the first of this year.

Q. How many of your wells are connected with a gathering or pipeline system?

A. Seventy-seven at the first of the year.

Q. How many are unconnected?

A. Eight.

Q. Eight wells are unconnected?

A. Yes, sir.

Q. Are those wells that are unconnected given an allocation under the orders of this Commission?

A. No, sir, they are not. The 77 connected wells are included in the January allocation.

[fol. 1390] Q. What is the January current allowable for those 77 wells?

A. The January current allowable for the 77 wells, Phillips owned wells, is 45 million cubic feet per day.

Q. Do you know what percentage of the total current allowable of the Field that represents?

A. Yes,—approximately 14½ percent of the Field current allowable for January.

Q. Do you have any knowledge of the production of these wells and the disposition of the gas produced?

A. Yes.

Q. Does that come under your jurisdiction?

A. Yes.

Q. What is done with the gas produced by Phillips Petroleum Company in Texas County, Oklahoma?

A. That gas is gathered, metered at the well, gathered through a large gathering system and taken down to the Phillips Hansford plant, just over the Oklahoma line, in Texas, purified, dried, then delivered to the Panhandle Eastern.

Q. Who gathers that gas?

A. The Phillips Petroleum Company gathers the gas.

Q. Whose system gathers the gas?

A. Phillips.

Q. Is any of that gas sold at the wellhead or anywhere else in the State of Oklahoma?

A. Essentially, no. There has been a very small quantity [fol. 1391] sold to drill some few gas wells,—that is, the gas was sold for drilling fuel, for convenience,—I might

say that essentially there has been no gas taken from our wells and sold that didn't go through the Hansford plant.

Q. The gas is taken to a central point, in Texas?

A. Yes.

Q. Where is that point?

A. At Hansford, Texas, located on Section 7 of the Public School Land, about a half mile south of the Oklahoma-Texas line.

Q. Before this gas enters the Hansford plant is it commingled?

A. The Oklahoma gas and Texas gas is entirely commingled in Texas.

Q. What is done with that gas at the plant,—do you know?

A. The natural gasoline fractions are removed, the water vapor is removed, in part, and the remaining gas, which is purified gas, is delivered into the Panhandle Eastern pipeline.

Q. Is that gas commingled with other gas?

A. Both the Oklahoma and Texas gas streams are commingled.

Q. Does the residue gas delivered to the Panhandle Eastern include both the Oklahoma and the Texas gas?

A. Yes.

Q. Where is that gas delivered to the Panhandle Eastern pipeline?

A. A few hundred feet east of our Hansford gasoline plant,—very near the plant.

[fol. 1392] Q. Is that gasoline delivered to Panhandle Eastern under contract or is it delivered——

Mr. Pruet: We object, for the reason the contract would be the best evidence, if there is a contract——

A. To my knowledge, the gas delivered from our Hansford property, both Texas and Oklahoma, has been delivered under contract between Phillips Petroleum Company and Panhandle Eastern Pipeline Company.

Q. Do you mean to say that so far as you know that's true, or do you mean to say that is true?

Mr. Pruet: We object to his leading the witness——

A. I know it to be true.

Q. Is the gas so delivered to the Panhandle Eastern Pipeline Company at the point in Texas, in the manner de-

scribed by you, in the same condition that it was when it was produced at the wellhead?

A. No, sir.

Q. Do you know the price, Mr. Binckley, which the Panhandle Eastern Pipeline Company pays Phillips Petroleum Company for the residue gas so delivered to it?

A. Yes.

Q. What is that price?

A. For the first five years of our contract the price is four cents per thousand cubic feet, at a pressure basis of 16.4 absolute.

Q. Was that for the first five years from the date of the [fol. 1393] contract or five years from the date of the first delivery?

A. Five years from the date of first delivery.

Mr. Floyd Green: (Addressing Mr. Williams) Do you intend to offer this contract into the record?

Mr. Williams: If anybody wants it to be offered——

Mr. Floyd Green: I want it in the record for the benefit of the Commission, unless you will stipulate that the contract has in it a——

Mr. Williams: I have no objection to placing the contract in evidence.

Reporter's Note: The Reporter is now requested to mark, as Exhibit 5, Order No. 19514, in Cause CD 1054; as Exhibit 6, Order No. 19515, in Cause CD 19515—and as Exhibit 7, the Contract last above referred to,—all of which were received in evidence and appear in proper order at the close of this record.

[fol. 1394] Mr. Williams: Applicant would like to offer in evidence Exhibit No. 7, being the contract between Phillips Petroleum Company and Panhandle Eastern Pipeline Company.

Chairman Bond: Received.

Whereupon the exhibit so offered and received is incorporated in this record and made a part hereof.

Mr. Williams:

Q. I believe you testified all of the residue gas from all the gas produced by Phillips Petroleum Company from its wells in Oklahoma, in Texas County, Oklahoma, are deliv-

ered to Panhandle Eastern Pipeline under the contract that has been introduced in evidence as Exhibit No. 7?

A. Yes, sir.

Q. And that contract speaks for itself as to terms?

A. Yes, sir.

Q. Now, you testified that the gathering system by which this gas was gathered from the wells in Oklahoma and taken to the Hansford plant in Texas were owned by Phillips Petroleum Company. Who owns the Hansford plant to which you have made reference?

A. Phillips Petroleum Company.

Q. Who operates that plant?

A. Personnel of the Phillips Petroleum Company.

[fol. 1395] Q. Mr. Binckley, aside from the residue gas that is derived from that plant, what other products, if any, are so derived from the gas entering the plant?

A. Raw and natural gasoline is taken from the gas.

Q. What disposition is made of the raw, natural gasoline to which you refer.

A. Of the product, the raw natural gasoline is piped down to a central treater near Borger, Texas, where it is further processed.

Q. Further processed for what purpose?

A. I can't answer that question specifically. It is broken down for various other products which Phillips makes at the Central treater.

Q. I will develop that by another witness, but you know it is taken from the Hansford plant to a central treater at Borger?

A. Yes, sir.

Q. Does Phillips Petroleum Company buy any gas in Texas County, Oklahoma?

A. No, sir.

Q. Does Phillips Petroleum Company transports any gas in Texas County, Oklahoma, other than gas produced from its own wells?

A. No, sir.

Q. Now you referred to certain sales for drilling purposes, is that a continuous practice or an occasional practice?

A. I believe to date we have sold drilling gas to two wells that were situated near to our developed area. I think in [fol. 1396] the future that will possibly disappear. I believe there will be very little more drilling gas sold.

Q. In volume that would amount to about how much which you have so sold?

A. This record I have says three hundred and thirty-two thousand. I believe there has been more gas than that. It is a very small fraction of one percent, it is a very, very small amount of gas.

Q. Is that part of your company's business or more as an accommodation to an offset operator?

A. It was an accommodation to the Stanolind people.

Q. Aside from those sales, you make no other sales in Oklahoma?

A. That is correct.

Q. The contract introduced in evidence as Exhibit No. 7, shows the acreage that is dedicated to that contract?

A. Yes, sir.

Q. Is all of that acreage in Oklahoma?

A. No, sir. Part of the acreage dedicated by the contract is in the State of Texas.

Q. Is any part of the acreage in the State of Texas developed?

A. Yes, sir.

Q. How many wells have been drilled on that acreage in the State of Texas?

A. Approximately one hundred and ten wells have been drilled and connected.

Q. What disposition is made of that gas from those 110 wells?

[fol. 1397] A. It is processed by the same gasoline plant.

Q. Is that the gas that is com-ingled with the gas that is brought in from Oklahoma?

A. Yes, sir.

Q. What is your current daily production of gas from the wells in Texas entering that plant, that is, in the Hugoton pool.

A. Approximately 77 million cubic feet per day average for the year 1946.

Q. Is that on the pressure base of 16.4 or 14.65.

A. That is on a pressure base 16.4 per square inch, absolute.

Q. Figure you gave us for Oklahoma was measured on what pressure base?

A. The forty-five million figure has previously been on a 16.4 pressure base, but it was on the January schedule of

the Commission, effective the 1st of January, all of those volumes have been changed to 14.65.

Q. Is the forty-five million to which you made reference, on a 16.4 or 14.65 pound pressure base?

A. It is on 14.65.

Q. What is the volume of gas entering the plant from Texas wells measured on a 14.65 pressure base?

A. Approximately eighty-six million cubic feet a day.

Q. Are the wells in Texas and Oklahoma producing from the Hugoton pool spaced on the same acreage pattern?

A. Yes, they are.

Q. What is that pattern?

[fol. 1398] A. Six hundred and forty acres per well.

Q. Now, what disposition is made of the residue gas from the gas produced from the Texas wells?

A. Same disposition is made of the residue gas produced from the Oklahoma wells. The two streams cannot be separated, they enter a common stream that enters the Panhandle Eastern Pipeline Company.

Q. Under the contracts introduced as Exhibit No. 7?

A. Yes, sir.

Q. Is that gas processed for the extraction of the liquid hydrocarbons?

A. Yes, sir.

Q. What disposition is made of the liquid hydrocarbons derived from that gas?

A. All the liquid hydrocarbons go in a common stream to the central treater near Borger, Texas.

Q. One other question,—A part of the instruments introduced as Exhibit No. 7, which is a later supplement agreement, makes provision with respect to the enrichment of the gas delivered to Panhandle Eastern and the payment of additional compensation for that enrichment, the contract speaks for itself in regard to that,—do you know whether or not the gas so delivered to Panhandle Eastern is presently being enriched?

A. Yes.

Q. Pursuant to that contract

A. Yes, it is.

[fol. 1399] Q. When you say the gas is being enriched, what do you mean?

A. The gas in enriched by the injection of hydrocarbon vapors so that the heating value of the mixture will be higher than the residue gas before such injection.

Q. As a matter of fact the enrichment they have has been requested by Panhandle Eastern and is being done pursuant to the terms of the contract.

A. Yes, sir.

Cross-examination.

By Mr. Pruet:

Q. Those hydrocarbons you reinject, that is something you reinject after taking out part of it.

A. That's right.

Q. In other words, you take out all the hydrocarbons and when you turn them over to Panhandle Eastern you put a little bit of the hydrocarbons back in it.

A. I can't agree we take all out.

Q. You take hydrocarbons out of the natural gas in the processing plant.

A. Yes, sir, in part.

Q. Part of that which you take out you later put back in there.

A. Yes, sir.

Q. So you see only putting back in there something you have already taken out.

A. That is correct.

Q. Due to that so-called, 'enriching' after you imposverished it, you enrich it, how much do you add on that four [fol. 1400] cents by your reinjection of the hydrocarbons into the gas, how much more do you get as a result of the four cents?

A. Recently it has been 4.67 cents per thousand. Of course that is also on the 16.4 pressure base.

Q. Then you get the benefit of the hydrocarbons you took, that you retain.

A. They are the products that are sent to the central treater.

Q. They are utilized and thereafter sold at a profit by the Phillips Petroleum Company, are they not?

A. I presume so.

Q. You don't know how much they make.

A. No, sir.

Q. Books of the company would show that, wouldn't they?

A. I rather doubt it as such. Now that product is used in many products. I don't know whether our books would reflect a profit on that product from the Hugoton Field or not. I seriously doubt that they would.

Q. Do you have a plat or drawing of the map that reflects your gathering system in Texas County and in the State of Texas?

A. I believe I have a work map with me.

Q. Will you let me see that just a moment please—you got wells further away from that plant than you have in Oklahoma.

A. I would say about the same, about the maximum point.

Q. Then there isn't a great deal of difference from the distance of your furtherest wells from that plant from your wells located in Texas than your wells located in Oklahoma, is there?

[fol. 1401] A. No, there isn't a great deal of difference.

Q. You don't know why the Company saw fit to put this plant a half mile over the line in Texas.

A. No, sir.

Mr. Williams: We object, incompetent, irrelevant and immaterial.

Mr. Pruet:

Q. Under your contract you can make your point of delivery any point of delivery fifteen miles distant from the Compressor station, you could, if you wanted to, deliver it to Panhandle Eastern in Oklahoma.

A. I don't know that I could answer that. I do 't know the answer to that.

Q. I will ask you if the contract you have identified between Phillips and Panhandle Eastern doesn't provide this, "The delivery point for all gas delivered hereunder from the dedicated acreage shall be a point designated by Phillips in or near Section Seven, Block One, P. S. L. Survey, Hansford County, Texas, and not more than fifteen miles from Panhandle Eastern's Hansford compressor station." From that provision your delivery point could be in Oklahoma, it is in the choice of Phillips Petroleum Company where that delivery is.

A. It is my understanding it was agreed to be in Texas, you couldn't change it now without changing the contract.

Q. Your contract says it is at a point to be disignated by Phillips.

A. I think that has been designated sometime in the past.

Q. You mean they couldn't redesignate it?

[fol. 1402] A. To me they couldn't without changing that provision of the contract.

Q. You had already started delivering gas at the point where you now deliver it before April 25th, 1944, hadn't you?

A. No, sir.

Q. When did you start delivering the gas to Panhandle Eastern?

A. November 18th, 1944.

Q. Where is the Panhandle Eastern Compressor station located from your plant?

A. About sixteen miles almost due east.

Q. Then that plant is also about half a mile from the Oklahoma line, isn't it?

A. I don't know which state that plant is in.

Q. Do you know whether it is in Oklahoma or Texas?

A. No, sir. I do believe it is reasonablcy close to the line.

Q. You could have a point of delivery in Oklahoma which would be within fifteen miles from their compressor station against fifteen miles directly east.

A. It looks to me it could be.

Q. Yes, sir. Now, you have 110 wells in Texas producing and connected to this compressor station, you have 77 wells in Oklahoma, do you not?

A. Yes, sir.

Q. And they are both connected with your compressing plant, I mean they are half a mile south of the Oklahoma line.

A. That is correct.

[fol. 1403] Q. How are they producing with reference to their present allowables,—are they producing most of their present allowables or not?

A. You mean the Oklahoma wells?

Q. In both states.

A. Yes, they are.

Q. They are now producing their full allowables.

A. Yes, sir.

Q. As a matter of fact your wells in Oklahoma in the past, under one order of this Commission accumulated a billion on overages of production, didn't they?

A. Yes.

Q. Alright, and you are selling all of that gas, these 187 wells in Oklahoma and Texas are now producing to their maximum aren't they?

A. No, sir.

Q. You just said they were, to their maximum allowables, didn't you?

A. Yes, but that isn't to their maximum.

Q. That is as much as they can legally produce?

A. I can't agree with that, with respect to the Texas wells.

Q. Well, the point is, you can't fill that market under your present allowables in your Texas wells, from your Texas wells, you got to produce from the Oklahoma wells to fill the market of Panhandle Eastern, haven't you?

A. No, sir.

[fol. 1404] Q. Well, you are producing your Texas wells now to the full extent of their allowables.

A. There is no order in Texas except to the 25 percent potential. We have many wells——

Q. Why did you say awhile ago they were producing their full allowable.

A. We consider the allowable simply between the States with respect to the same order that exists in Oklahoma. They are pretty well producing their allowables but that Order is not in existance in Texas.

Q. I understand you do have an Order in Texas, or law, that governs the amount of your production.

A. At twenty-five percent of their potentials.

Q. They are producing that at the present time.

A. No, sir, many, many of those wells are producing at ten and twenty percent.

Q. You said they — producing their full allowables, is that correct?

A. There are two different statements with respect to the kind of allowable that Oklahoma wells have and Texas have,—even though that Order does not apply in Texas I should say our Texas wells are producing that allowable, but if we want to physically produce more gas from Texas we are only bound by the twenty-five percent rule, we can open the wells up and get more gas.

Q. Does the gas in Texas and the gas from Oklahoma go [fol. 1405] into this processing plant of yours in the same pipe or com-ingled after they get into the plant?

A. They are com-ingled in the field in many instances.

Q. Do you know how much gas goes in there from Oklahoma and how much goes in from Texas?

A. We have a meter at each well in Oklahoma and the sum of those volumes is the Oklahoma volume, we do have that figure.

Q. All of it goes in and comes out except what you take out of it.

A. Yes, sir.

Q. So no great problem in finding out how much Oklahoma gas goes into that plant.

A. It is very simple to find out how much Oklahoma gas goes in the wet stream of the plant,—the difficulty of course, you can't tie a ribbon on it and keep it separated.

Q. You have changed your pressure base on the Oklahoma gas to comply with the Commission's Order.

A. Yes, we are reporting volumes to the Oklahoma Commission effective the 1st of January, 14.65 pressure base.

Q. I believe you said this gas was further processed near Borger, Texas, but is isn't——

A. I didn't say that. I said liquids, gasolines.

Q. Is that the liquids you take out in your processing plant?

A. Yes, sir.

Q. You take them down to Borger and reprocess them there.

A. Yes, sir.

[fol. 1406] Q. In Borger Tex s.

A. Liquids only.

Q. Yes. What do you take out besides liquids?

A. Nothing. You might say we take out some residue to run the extraction plant.

Q. The point of its is, whatever you take out of the gas you don't put in there is liquid hydrocarbon.

A. That's right.

Q. You take that down, pipe it down to the plant at Borger and you process it there.

A. That's right.

Q. But you are actually getting from this natural gas that you sell to the Panhandle Eastern 4.67 cents per thousand cubic feet, measured at 16.4 pounds per square inch, absolute pressure.

A. Per square inch.

Q. You do make a profit out of the hydrocarbons that you take out of the gas and take down to Borger.

A. I presume we do.

Q. You don't do it for fun.

A. We couldn't do it very long.

Q. Do you know what you pay your royalty owners in Oklahoma for your gas?

A. Yes, roughly.

Q. Let's have it just as rough as it is.

A. One-eighth of the 4.6 cents.

Q. As a matter of fact you pay most of them less than [fol. 1407] four cents, don't you?

Mr. Williams: I object as improper cross-examination from this witness.

Mr. Pruet: That's all.

Cross-examination.

By Mr. Green:

Q. Did you say you could produce enough gas from your Texas wells to satisfy your Panhandle Eastern Contract?

A. Of course that volume varies. During the heavy winter load it might be difficult, we haven't tried that.

Q. Under your contract you have certain volumes to deliver.

A. Yes, and they do change from day to day.

Q. Does your volume you are under obligation to deliver increase or does that obligation stay stationary that you are under obligation to deliver?

A. It has been, since the plant went into operation, substantially steady. It has increased now and then, it is more or less a fluc-uating market that varies some with the season.

Q. Are you under obligation under your contract to deliver any particular amount or amounts demanded of you?

A. No, they ask us for contractural volume of the delivery of the plant.

Q. Recently the Michigan-Wisconsin Pipeline Company was granted a permit by the Federal Power Commission to build a line into that area.

A. I think so.

[fol. 1408] Q. Your company is going to supply some of the gas to that pipeline.

A. Yes, sir.

Q. Are you going to supply all of it or part of it?

A. We will supply it all if we include contracted gas.

Q. Will you supply it from your Texas wells of your Oklahoma wells or both?

A. Both.

Q. Will that delivery be made in Oklahoma or in Texas?

A. I don't know.

Q. You don't know about that.

A. No, sir.

Q. Your contract hasn't been entered into as to amounts or price.

A. Yes, I have seen the contract. I'm not familiar with it. I presume the contract was introduced in Washington in FPC proceedings.

Q. Approximately, when are deliveries to be started under that contract?

A. Just be a guess. I would say sometime in the latter part of '49.

Q. How does the volumes that you will be under obligation to deliver to that pipeline compare with the volumes that you are delivering under your contract with Panhandle Eastern?

A. Their total requirements are considerably in excess of the present Panhandle Eastern requirements.

[fol. 1409] Q. The volumes you will be required to deliver under both contracts, will be allowed to take both in Oklahoma and Texas, from both wells in Kansas and Texas.

A. It appears to be that way.

Q. Well, you will have a market or outlet from all your wells, all your leases in all States—from those two States.

A. At sometime in the future they will be totally developed.

Q. You have entered into a binding agreement with the Michigan-Wisconsin Pipeline Company on that contract.

A. Yes, sir.

Q. Does that contract, like this one, provide that the terms of the contract are subject to future orders of regulatory Commissions?

A. I don't know.

Q. That's all.

Mr. Williams:

Q. You said that the first delivery to the Panhandle Eastern Pipeline Company were made on November 18th, 1944, is that correct?

A. Yes, sir.

Q. Was the point of delivery designated at or prior to that time?

A. It would have had to have been, yes, sir.

Q. Has that point of delivery remained fixed at all times since then?

A. Yes, sir.

[fol. 1410] Q. Now you made reference again to your company's gathering system, was to gather this gas from the wells for delivery to the Hansford plant—do you know the approximate investment of your company in that gathering system?

A. Only so far as your statement awhile ago set out that figure.

Q. What was that?

Mr. Pruet: We object to him testifying as to his counsel's statement.

Mr. Williams: We have another witness who knows that figure.

Mr. Williams:

Q. Now the gas deliverable to Michigan-Wisconsin Pipeline when it is constructed into the field, will that come from these wells concerning which you have testified here today or does that come from other acreage?

A. That will come from entirely different acreage.

Q. Is the acreage dedicated to that contract developed at the present time?

A. Only to a small degree.

Q. How many wells are drilled on that acreage in Texas County, Oklahoma?

A. Two. Two wells are drilled on the Michigan-Wisconsin dedicated acreage in Texas County, Oklahoma.

Q. Your estimates of first deliveries into that new market I believe you testified was the latter part of 1949.

A. Yes, sir, that is dependent on a lot of things and purely a judgment figure. I didn't read it in the contract.

(Witness excused.)

[fol. 1411] Whereupon Roy Green, of lawful age, being first duly sworn, testified as follows, to-wit:

Witness examined by Mr. Williams:

Q. You were sworn Mr. Green?
A. Yes sir.
Q. You may state your name.
A. Roy Green.
Q. You are with what company?
A. Phillips Petroleum Company.
Q. In what Capacity?
A. Engineer in the Gasoline Department.
Q. How long have you been with Phillips Petroleum Company?
A. Fourteen years this month.
Q. As an engineer in the gasoline department do you have any duties with respect to gasoline operations with your company in the panhandle in Texas and Oklahoma?
A. For the first four years my work de-lt wholly with manufacturing gas and for the last ten years of my work with gas operations in that area.
Q. Are you acquainted with the plant of Phillips Petroleum Company known as the Huntsford Gasoline Plant in Huntsford, Texas?
A. Yes.
Q. And familiar with the volume and disposition of gas products from the gas?
A. Yes, from the gasoline plant.
[fol. 1412] Q. Approximately what is the volume of gas delivered to that plant each day?
A. One million feet at 14.65.
Q. What is done with the gas delivered to the plant?
A. It is processed in the gasoline plant and liquid and hydro carbon recovered and delivered to Panhandle Eastern.
Q. You heard Mr. Bedard with Phillips Pipe Line Company?
A. Yes.
Q. You are acquainted with that?
A. Yes.
Q. Are you acquainted with the disposition of the liquids distributed from the plant?
A. Yes.

Q. What is done with it, what is done with this liquid?

A. Transfered from the Huntsford plant to the central treater at Borger, Texas.

Q. By pipe lines?

A. Yes.

Q. What is that distance, approximately?

A. Oh, I would say fifty to sixty miles.

Q. Do you know what the volumes of liquid hydro carbons are extracted from the gas per thousand cubic feet?

A. Yes.

Q. What is that volume?

A. Volume or percent?

[fol. 1413] Q. However you wish to measure it.

A. Our recovery as a liquid is approximately six tenths of a gallon per thousand or total gallonage is seventy-eight to eighty thousand gallons daily of raw gasoline.

Earl Pruet: From Huntsford, plant?

A. Yes sir, or that is what is transported from that plant to the central treater.

Earl Pruet: That is what you take from the plant?

A. Yes.

Williams continues with the witness:

Q. Is there any liquids extracted in addition to this at Borger?

A. Yes.

Q. What are those?

A. These are transferred into a vapor and put in Panhandle Eastern pipe lines.

Q. Is that the product that is used to liquidify the gas?

A. Yes.

Q. What part of the liquid is used for that purpose?

A. Well its the later components of the raw gasoline, its primarily propane.

Q. Now what disposition is made of the raw liquid at the hands of Phillips Petroleum Company to the central treater at Borger?

A. I know in a general way. That raw gasoline is com-ingled with raw gasoline in other plants in Texas and our pusher gas we buy from other companies is transported [fol. 1414] considerable from our West Texas plant and it all comes into that central point. It runs through the fractionators where it is separated into various fractions ac-

cording to the demands we have for different types of Hydro carbon, the first is a mixture of propane and butane then we make normal butane that is eventually made into la-quer then we transport that to a treater and some of that finds its way into motor fuel, some is pipe lined to Kansas City and points north.

Q. We have the total volume of raw liquid transported to the central treater of gas delivered to Huntsford plant, what are the principle products first made from that at the plant?

A. At the gasoline plant?

Q. Yes at Borger.

A. The first product made of course is the later Hydro carbon which is propane and butane.

Q. What is another product?

A. Well, 26.70 gasoline is a specific gasoline that is made according to what our demands are and what type the specifications we made.

Q. In the eighty gallons of raw liquid so transported and you said that was daily?

A. Yes.

Q. Approximately how much 26.70 gasoline is to be found, how much propane and butane?

A. Approximately forty-six to forty-seven gallons is 26.70 and the remainder which is propane and butane which [fol. 1415] will be about thirty-two to thirty-four thousand gallons.

Q. That is daily out?

A. That isn't cut at the gasoline plant its all transported to the treater and all treated the same.

Q. You have testified, Mr. Green, with respect to liquid contents of this gas, is that in the co-mingled state?

A. That is right.

Q. Is there any difference between the liquid content between the gas from wells in Texas and in Oklahoma?

A. It's essentially the same.

Q. You are talking about gas produced from the Hugoton Field?

A. I am talking about gas in the Huntsford plant.

Q. Is that from any source other than the Hugoton field?

A. No sir.

Q. I believe that is all.

Floyd Green examines the witness:

Q. Did the testimony here show that you got 4.67 cents per thousand for enriched gas for Panhandle Eastern?

A. Yes.

Q. And six tenths approximately for one thousand cubic feet of gas at Huntsford?

A. In the raw state.

Q. What is the six tenth per gallon worth?

A. I don't know.

[fol. 1416] Mr. Williams continues with witness again:

Q. Has that raw product coming from the Huntsford plant a commercial product?

A. It has no value for it.

Floyd Green examines the witness:

Q. You say that you get forty-six thousand gallons of gasoline?

A. That is what we calculate to be in there.

Q. And Oklahoma 76.70 gasoline at present time wholesales from five to five and a quarter cents a gallon?

A. I understand that.

Q. That leaves thirty-four thousand gallons of propane and butane and butane and propane have approximately the same value?

A. There is a difference.

Q. Of the thirty-four thousand gallons of propane and butane you get how much is propane and how much is butane after you separate them approximately?

A. Some butane probably remains at 26.70 is excess of propane and butane 26.70 that you mentioned there, I would hesitate to say how much of that is there because there is a difference in types of gasoline.

Q. What is that ordinarily worth in carload lots?

A. I am not familiar with that.

Q. Its value is not comparable then with the raw product?

A. Its lower than 26.70 gasoline.

Q. That is all.

Witness excused.

[fol. 1417] Whereupon F. E. Rice, of lawful age, being first duly sworn, testified as follows, to-wit:

Witness examined by Mr. Williams:

Q. You may state your name.
A. F. E. Rice.
Q. Where do you live Mr. Rice?
A. Bartlesville.
Q. What company do you work for and with whom are you associated?
A. Phillips Petroleum Company.
Q. In what capacity?
A. Vice-President of the Company.
Q. In charge of what operations of your company?
A. In charge of the gasoline and gas divisions of the company.
Q. How long have you been with the company?
A. Almost twenty-eight years.
Q. How long have you been a Vice-President of the company in charge of the gas and gasoline departments of that company?
A. About sixteen years.
Q. How long have you been in charge of that division of its operations?
A. Since it started.
Q. About how long is that?
A. Since the company has been in existance, over twenty-eight years.
Q. How long have you been in the natural gas and gasoline Business?
[fol. 1418] A. About thirty years.
Q. State briefly into the record your schooling and educational background for your present duties and also your experience other than that you have stated here.

Floyd Green: We will admit his qualifications and let him testify as an expert.
Earl Pruet: We will do the same thing.
Chairman Bond: Let the record so show.

Mr. Williams continues with the witness:

Q. You heard Mr. Green testify?
A. Yes.

Q. And of the operations in the Hugoton Field in Texas?

A. Yes.

Q. Are you familiar with the company's operations in Texas?

A. Yes.

Q. Are you familiar or have you made any study of the available markets of gas from that area?

A. As head of the gas division I had supervision over the development and seeking out of those markets.

Q. Have you had any contact with the procurement of the market of Panhandle Eastern Market value?

A. I am familiar with it.

Q. Is that one of the first major pipe lines that took gas out of that area?

A. Yes it is.

[fol. 1419] Q. Is that one of the deals that we helped to establish, one of the first major markets in that area?

A. Yes I believe it was the first.

Q. Have you had occasion to seek other markets of other gas of Phillips either presently producing or anticipating to be produced?

A. Yes.

Q. Have you made a study of market conditions generally for outlets for gas?

A. In that particular area, yes sir.

Q. Assuming Mr. Rice, that Phillips Petroleum Company were to loose this market with Panhandle Eastern Company for its gas in the presently developed properties in the Texas County area of the Hugoton pool, do you know of any other market that your company could obtain for gas from that pool for seven cents per thousand cubic feet at the well head or for any other price in that immediate neighborhood?

A. At the present time I do not stir, especially at the higher price, I know of no such market.

Q. Has your company negotiated any gas contracts for the sale of gas in that area within the past year?

A. Yes sir.

Q. In the negotiations of this contract did your company ende-vor to secure the best possible price?

A. Yes.

[fol. 1420] Q. Were you in those negotiations able to negotiate any contract at all to yield to your company the price of seven cents per thousand cubic feet for gas at the well head?

A. No sir.

Q. Name, if you can, Mr. Rice, the other markets for gas available to producers in the Texas County area of the Hugoton pool?

A. The only one I know of, the only market at the present time is Cities Service outlets.

Q. Do you have informaiton with respect to the capacity of the Cities Service lines with respect to being able to carry additional gas over and above that now being carried in those lines?

A. Only that Cities Service has told officials, some in my own department that their facilities at the present time were loaded and running to capacity.

Q. Do you know of any other markets for gas in that pool other than Cities Service?

A. The ony other market that I know of is Cabot Carbon Company taking a small amount for carbon black operations.

Q. Do you have any information as to whether Cabot Carbon Company is loaded as far as its facilities are concerned?

A. I have been advised that they run their plant at capacity and use all the gas that they can use.

Q. Assuming that Cities Service have available capacity for additional market for gas, would *would* be required with [fol. 1421] respect to Phillips Petroleum Company gathering system to gather that gas for that company?

A. Our gathering system is laid out for transportation of gas from the Oklahoma properties to the Huntsford gas line. We have lines near there to gather the gas and that is carried to the big lines nearest the plant and it is carrying gas from it and taken north in the Cities Service System. The main lines will all have to be reversed and gas gathered at some northern point instead of the southern acreage and then put in series otherwise we would have to put in boosters.

Q. Do you have an estimate of approximate the cost to reverse the sy-tem of flow, in round figures?

A. We figured that and it was at least one million dollars to reverse the flow of that gas.

Q. That would be assuming that it could be delivered to Cities Service?

A. That is correct, that would be reversing our system so to speak.

Q. Mr. Rice, assuming a new market could be found for this gas at seven cents per thousand cubic feet at the well-head, will it in your opinion require the instillation of new main line facilities to the field?

A. It would mean lines all to be built if main lines carry the gas intrastate. I also might say that all gas from the field, particularly all gas should be treated in that heavier fractions must be taken out and dehydrated in order to get the line capacity.

[fol. 1422] Q. Have you had any experience or do you have any knowledge with respect to the approximate knowledge of the facilities to the field in case the new market is found?

A. I am sure that you gentlemen will take knowledge of the fact that it is hard to obtain materials and we have not had a chance to buy steel except for something and it will take at least a year for facilities to take the gas into the field.

Q. In other words assuming that a new market is found it will be at least a year to supply that market with gas?

A. Yes.

Q. Are you acquainted with the Michigan-Wisconsin deal?

A. Yes.

Q. Did you hear his estimate of time required for the facilities to be installed to complete that arrangement and that market?

A. Yes sir.

Q. Do you have any different judgment as to the time to establish that market?

A. I believe his estimate was correct originally the estimate was to take gas out of Texas about the first of 1948 but it has been extended to the first of 1949.

Q. In other words in respect to that new market already found it will be approximately two years before it can be delivered to that market?

A. That is correct.

Q. That is all.

[fol. 1423] Examination.

By Mr. Floyd Green:

Q. Mr. Rice, some witness testified that you get approximately .6 of a gallon of liquid hydrocarbons per thousand cubic feet, from the plant at Hansford, Texas. Do you know what the value of that .6 of a gallon is, assuming that about .45% of it——

A. No, I haven't those figures, Mr. Green. That statement as to the value of 26.70 gasoline is the price that is——

Q. 5¼¢ cents?

A. I believe its five cents. But, I'll say this,—the natural gasoline price did get down as low as two to three cents.

Q. Your Company handles propane and butane?

A. Yes.

Q. What do you sell it for in carload lots?

A. I believe a little over two cents f. o. b.

Q. And taking into consideration the 4.6 cents, isn't it a fact that you receive almost 7 cents per thousand cubic feet for all the gas——

A. No, sir that is not correct. I'll explain that,—we have a BTU specification in the Panhandle Eastern contract,—we have to sell them 975 BTU gas,—that's part of the contract, and the liquied extracted brings the BTU,—part of the liquids are now being left in the gas to raise the BTU to meet specification. Panhandle Eastern wants higher than 975 BTU and we leave part of the liquids in the gas.

[fol. 1424] Q. That's the part that goes to Panhandle Eastern?

A. Yes.

Q. That doesn't include the .6 gallon which you get out of each thousand cubic feet of gas down at Borger, Texas, does it?

A. I believe it does include that. I believe it includes that.

The total recoverable liquid, of 78 to 80,000 gallons, I believe part of that is the portion going back into the gas stream at Hanford, Texas.

Q. Now, Mr. Green testified that you deliver your natural gas to the Panhandle Eastern at 4.6 per thousand cubic feet?

A. Which includes the enriching vapors. And part of the eighty thousand gallons goes back into the gas stream.

Q. In the gas stream that goes to Panhandle Eastern?

A. Yes.

Q. How much?

A. I understand there are some 20,000 gallons of liquids.

Q. Then you don't have 80,000 gallons daily going to Borger, but you have approximately 65,000 gallons?

A. That's probably right,—I might be wrong about those figures.

Q. Assuming that your Company can't induce Panhandle Eastern to raise their price to conform to the price fixed by this Commission then the amount your Company will be out, according to this order, if you are held to that contract, will involve the amount of money that you pay to your royalty owners, and it will be the difference between one-eighth of four cents and one-eighth of seven cents?

[fol. 1425] A. That's correct.

Q. You will still pay gross production tax on the basis of the amount you get from Panhandle Eastern, won't you?

A. (No answer.)

Q. Now, you have been advised that Cities Service lines are full——

A. I said at the present time they were full.

Q. Now assuming that this Commission enforces the ratable taking statutes as to gas in the Guymon-Hugoton Field, and enforces correlative rights, wouldn't your Company be entitled to take their proportionate share of gas from the Field and go into any line that went out of the Field, even though it required Cities Service to curtail their production and——

A. I suppose that's right.

Q. You would still get your pro rata share, wouldn't you?

A. That's right.

Q. Does your Michigan contract have a clause in it, making it subject to regulatory bodies?

A. I think so.

Q. I will ask you if under your contract with Panhandle Eastern, dated April 25, 1944, supplement, paragraph 3, your Company couldn't deliver the gas to the Panhandle Eastern in Oklahoma as well as in Texas, if you wanted to?

A. We would have to build a new plant, new facilities, if it could be done.

Q. You could build a line across the line from Hansford, [fol. 1426] Texas, and deliver it there,—bring it back into Oklahoma and sell it under your contract with Panhandle Eastern?

A. Physically,—yes.

Q. Well, under your contract, couldn't you?

A. I don't know,—we were supposed to deliver it at one point.

Q. Are you familiar with this clause in your contract, which is the Supplemental Agreement made April 25, 1944, which says, (reading from document) "Phillips agrees that the gas to be delivered by it from the dedicated acreage, as hereinabove provided, shall be delivered at the point hereinafter described at pressures not less—" no,—that's the wrong one. Paragraph 2—(reading) "The delivery point for all gas delivered hereunder from the dedicated acreage shall be a point designated by Phillips in or near Section 7, Block 1, P. S. L. Survey, Hansford County, Texas, and not more than fifteen miles from Panhandle Eastern's Hansford Compressor Station",—now, that point could be in Oklahoma, couldn't it?

A. No.

Q. A point in or near Section 7, Block 1, and not more than fifteen miles from Hansford Compressor Station,—that could be in Oklahoma, couldn't it?

A. Yes, it says, "in or near", whatever that means.

Examination.

By Mr. Williams:

Q. Mr. Rice, I intended to ask Mr. Binckley this question, but I'll ask you instead of recalling him to the stand,—[fol. 1427] do you know what disposition or use is made by Panhandle Eastern of the gas delivered to them from the Hansford plant,—what do they do with it,—where do they take it?

A. They take it into their interstate pipeline system and it goes into many communities.

Q. Do you know their terminal points, or what communities are served by them, what states they serve?

A. I understand the final terminal is Detroit. There are several branches,—it's a vast system, going through many states, one of the biggest pipeline systems there is.

Q. You understand the terminal is at Detroit, Michigan?
A. Yes, I believe so.
Q. Do you know whether they are a national company, under the National Gas Act?
A. Well, I think they are.

Examination.

By Mr. Pruet:

Q. That pipeline which is used to deliver gas to the Panhandle Eastern into Texas, that pipeline comes back through Texhoma, Oklahoma, doesn't it?
A. Yes.
Q. And they transport that gas back through the Panhandle of Oklahoma?
A. Yes.
Q. And they buy it here and take it, transport it out of [fol. 1428] this same Field?
A. Well, I don't know of any only ours.

The Witness Excused.

Mr. Williams: I believe that's all the applicant has to offer.
Mr. Pruet: That's all.

HEARING CLOSED

Chairman Bond: The Commission will close the case and take it under advisement.

[fols. 1429-1430] RECITAL AS TO ORAL ARGUMENT AND ANNOUNCEMENT OF DECISION

Thereafter, on February 4th, 1947, this cause came further on for oral argument, pursuant to order of the Commission and Notice to the parties, the Honorable Reford Bond, Chairman Ray O. Weems, Vice-Chairman, and Ray C. Jones, Commissioner, sitting. R. M. Williams and Harry Turner, Attorneys, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney, appeared for the Respondent, Peerless Oil and Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

Oral argument was heard, and, at the conclusion of said argument the following proceedings were had:

Chairman Bond: Gentlemen, one of the Commissioners was not here when this case was heard. He has been listening in but he isn't going to take any part in the decision. The Commission denies the application. You may draw an order accordingly.

The Commission then adjourned.

[fol. 1431] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054

Order No. 19702

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a corporation and ALL OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS IN THE STATE OF OKLAHOMA, and particularly in the Guymon-Hugoton Field, Respondents,

THE SCHOOL LAND COMMISSION OF THE STATE OF OKLAHOMA and Texas County Land & Royalty Owners Association, Interveners

REPORT OF THE COMMISSION—February 4, 1947

This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of January, 1947, at 1:30 o'clock, p. m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner, sitting. R. M. Williams, Attorney of Bartlesville and Harry Turney, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent Peerless Oil & Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 p. m. for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral [fol. 1432] argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

Findings

1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbers 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been filed to the granting of the order.

3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbers 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, Purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips [fol. 1433] Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from

the natural gas at the plant in Texas, to another plant owned by applicant near Borger Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26.70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-[fol. 1434] Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless

producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform price for the field, is permitting discrimination in price which adversely affects many producers and royalty [fol. 1435] owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuel; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses of one of Oklahoma's most valuable resources.

7. That applicant herein, Philfips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

8. That this application should be denied in the interest of preventing: (a)—economic waste of a great natural resource to wit: natural gas, (b)—actual physical waste of natural gas in the Hugoton Field. (c)—loss to the producers and royalty owners in said field, (d)—loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission (e)—the inequitable taking of natural gas from the common source of supply owned by all; (f)—discrimination as to prices paid throughout the field, which discrimination adversely effects many royalty owners and producers, (g)—the inefficient and wasteful utilization of natural gas.

9. That this application should be denied.

[fols. 1436-1437] Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19515 heretofore issued by this

Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

Done and Performed this the 4th day of February, 1947.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman.

Attest: Tom McMurray, Secretary.—(Seal.)

[fol. 1438] [File endorsement omitted]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL: REQUEST TO CERTIFY FACTS AND RECORD TO THE SUPREME COURT: AND APPLICATION FOR SUPERSEDEAS —Filed February 7, 1947

Phillips Petroleum Company, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, being directly affected and aggrieved by Order No. 19514, and Order No. 19515 made and entered by the Corporation Commission of the State of Oklahoma in the above styled and numbered cause under date of December 9, 1946, and by Order No. 19702 made and entered by said Corporation Commission in said cause under date of February 4, 1947, denying the application of said Phillips Petroleum Company to vacate and set aside said Order No. 19514, and so much of Order No. 19515 as applies to said Company, hereby gives notice of its intention to appeal from each and all of said [fol. 1439] orders to the Supreme Court of the State of Oklahoma, and requests that this notice of appeal be duly entered upon the docket of the Commission.

For the purpose of perfecting said appeal, said Phillips Petroleum Company further respectfully requests that the chairman of this Commission certify to the Supreme Court of the State of Oklahoma, under the seal of the Commission, and transmit to the clerk of said court, to be filed with the record in said appeal, a true and complete transcript of all proceedings had before this Commission in the above styled and numbered cause, including copies of all applications, notices of hearings, answers or other pleadings therein; all

evidence introduced before the facts considered by the Commission in the hearing of said cause and in the making of each of said orde-s aforesaid; a copy of each such order and a written statement of reasons upon which the action of the Commission is making each such order was based, all as by law provided.

Said Phillips Petroleum Company further requests that an order be made by this Commission suspending and superseding said orders numbered 19514 and 19515 as to Phillips Petroleum Company, pending the final determination of its said appeal from said orders and its appeal from said Order No. 19702, and fixing the terms, conditions and amount of the supersedeas bond required to be given therefor, as by law provided. In respect to its said request for an order of supersedeas herein, Phillips Petroleum Company avers that it, in [fols. 1440-1441] good faith, desires and intends to prosecute and appeal to the Supreme Court of the State of Oklahoma from said orders aforesaid and to secure a review thereof by said court; that the granting of said supersedeas will not work a hardship on the public or any of the parties benefited by the orders aforesaid, but will operate to preserve and protect the rights of all parties, pending such appeal.

Dated this 7th day of February, 1947.

Phillips Petroleum Company, by (S.) Don Emery, Rayburn L. Foster, R. N. F. Hummer, R. M. Williams, Harry D. Turner, Its Attorneys.

[fol. 1442] [File endorsement omitted]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER ALLOWING SUPERSEDEAS—Filed February 11, 1947

Phillips Petroleum Company, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, having filed herein its notice of intention to appeal to the Supreme Court of the State of Oklahoma from Order No. 19514 and Order No. 19515 made and entered by the Commission herein under date of December 9, 1946, and from Order

No. 19702 made and entered by the Commission herein under date of February 4, 1947, and having requested that an order be entered superseding the operation and effect of said Orders No. 19514 and No. 19515 as to said Phillips Petroleum Company pending said appeal, and the Commission being fully advised in the premises finds that said application for supersedeas should be granted.

It is therefore considered, ordered and decreed by the [fol. 1443] Commission that upon the filing by said Phillips Petroleum Company of a supersedeas bond payable to the State of Oklahoma in the sum of Fifty Thousand Dollars ($50,000.00), to be approved by the secretary of this Commission, conditioned that said Phillips Petroleum Company will, in the event said orders aforesaid are affirmed on appeal, well and truly pay all damages occasioned by such appeal, said Orders No. 19514 and No. 19515 shall be superseded, suspended and stayed as to Phillips Petroleum Company pending the final determination of the appeal therefrom by Phillips Petroleum Company or until further order of the Supreme Court of said appeal.

Because of the financial responsibility of said Phillips Petroleum Company, the bond hereinabove required to be given by said company will be sufficient if signed by said company as principal without the signing thereof by additional sureties.

Corporation Commission of Oklahoma, (S.) Reford Bond, Chairman; (S.) Ray O. Weems, Commissioner; (S.) Ray C. Hones, Commissioner.

Attest: (S.) Tom McMurray, Secretary. (Seal.)

[fol. 1444] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. CD-1054

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, Respondent,

STATE OF OKLAHOMA on Relation of Commissioners of the Land Office of the State of Oklahoma and Texas County Land and Royalty Owners Association, Interveners

CERTIFICATE

I, Reford Bond, Chairman of the Corporation Commission of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct transcript of the record made before the Corporation Commission, in Cause No. CD-1054, above entitled. I further certify that the record contains all of the pleadings, evidence, taken or introduced, offered or considered by the Commission, together with all objections thereto, all motions, exceptions, rulings and orders of the Commission made in said cause, and all of the facts upon which Order No. 19702 was based, together with a copy of said Order.

Given under my hand and the seal of the Corporation Commission of the State of Oklahoma, this 14th day of February A. D. 1947.

(S.) Reford Bond, Chairman.

Attest: Tom McMurray, Secretary. (Seal.)

[fol. 1445] EXHIBIT 1—Exhibit 1 is the Application of Phillips Petroleum Company to Vacate Orders No. 19514 and No. 19515, filed January 17, 1947, and as this document is copied in full at the beginning of this record it is not again copied at this point.

EXHIBIT 2—Exhibit 2 is the Order setting Cause for Hearing, hereinbefore copied, so same is not here copied.

EXHIBIT 3—Exhibit 3 is Notice of Hearing of said Application, also heretofore copied, therefore not copied at this point.

EXHIBIT 4—Exhibit 4 is Affidavit of Publication of said Notice (Exhibit 3), and same, having been heretofore copied is not copied at this point.

[fols. 1446-1457] Exhibit 5 omitted. Printed side page 18 ante.

[fols. 1458-1469] Exhibit 6 omitted. Printed side page 28 ante.

[fol. 1470] EXHIBIT 7

SUPPLEMENTAL CONTRACT BETWEEN PHILLIPS PETROLEUM COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY

April 5, 1943

[fol. 1471] Supplemental Contract

Agreement made and entered into this 5th day of April, 1943 by and between Panhandle Eastern Pipe Line Company, a Delaware Corporation, hereinafter referred to as "Panhandle Eastern", and Phillips Petroleum Company, a Delaware Corporation, hereinafter referred to as "Phillips",

Witnesseth:

ARTICLE I

1. The parties hereto have entered into a certain contract, hereinafter referred to as the "Original Contract", dated April 5, 1943, dedicating certain gas acreage in the Hugoton field and providing for the sale by Phillips and purchase by Panhandle Eastern of natural gas in the Hugoton and Panhandle fields. A copy of said Original Contract is hereto attached, marked Exhibit "A", and made a part hereof as if herein set forth at length.

2. On February 4, 1943, Panhandle Eastern entered into a contract, hereinafter referred to as the "East Ohio Contract", with East Ohio Gas Company, hereinafter referred

to as "East Ohio", under the terms of which Panhandle Eastern is obligated to sell and deliver to East Ohio and East Ohio is obligated to purchase and receive from Panhandle Eastern, on a firm basis, 50,000,000 cubic feet of gas per day, or 30% per day of East Ohio's average daily natural gas sales during the immediately preceding twelve months' period, whichever is the lesser. Said contract is for a term of five years from the date of Panhandle Eastern's first delivery of gas to East Ohio and thereafter until terminated by Panhandle Eastern or East Ohio, upon six months' prior written notice to the other.

[fol. 1472] 3. In order to supply its increasing markets for gas, including the volumes of gas that may be delivered under said East Ohio Contract, Panhandle Eastern now proposes to increase the capacity of its pipe line system, including its pipe line extending from its Liberal Station in Kansas to the Panhandle field in Texas, referred to in the Original Contract as the "Texas line", and to purchase additional supplies of gas in the Panhandle field. Phillips owns and has under control gas leases in Moore County, Texas, covering approximately 154,000 acres of land containing large proven reserves of natural gas. This acreage has been partially developed and Phillips represents that with its existing gathering and transportation facilities, together with a relatively small quantity of additional critical materials, it readily can make available and deliver to Panhandle Eastern at Panhandle Eastern's Sneed Compressor Station located in Moore County, Texas, gas of substantially the same quality as the gas now being delivered by Panhandle Eastern to its customers in the volumes hereinafter required to be delivered under this contract. Panhandle Eastern desires to purchase such gas from Phillips and Phillips desires to sell such gas to Panhandle Eastern but delivery of such volumes of gas to Panhandle Eastern by Phillips from the Panhandle field of Texas is not provided for in said Original Contract and, accordingly, subject to the happening of the contingencies hereinafter described, Phillips agrees to sell and deliver gas to Panhandle Eastern and Panhandle Eastern agrees to purchase and receive gas from Phillips in accordance with the terms of this Supplemental Contract.

Article II

(Definitions)

[fol. 1473] The term "day" as used herein shall mean a period of twenty-four consecutive hours beginning and ending at seven o'clock A. M. Central Standard Time or such other standard time (presently Central War Time) as shall be in effect at the point of delivery hereinafter specified.

Article III

(Scope of Agreement)

1. Panhandle Eastern agrees to use its best efforts to obtain at the earliest practicable date all authorizations and all materials necessary for the completion of the enlargement of the capacity of its pipe line system, as above stated, and all certificates, licenses or permits necessary to authorize the sale of natural gas to East Ohio, as provided in said East Ohio Contract, and, subject to the procuring of all such authorizations, materials, certificates and licenses or permits, to proceed with due diligence to the completion of the installation of all loop lines and other facilities required for the enlargement of the capacity of its said pipe line system, including the enlargement of said Texas line.

2. Phillips agrees to use its best efforts to obtain all necessary authorizations and materials for the installation of such additional facilities as shall be necessary for its performance of this contract and, subject to Panhandle Eastern's obtaining all authorizations for the enlargement of its pipe line system, as above provided, and subject to Phillips' obtaining necessary authorizations, as above stated, to proceed with due diligence in the installation of such facilities. Upon receipt of all such necessary authorizations, Phillips shall promptly notify Panhandle Eastern thereof in writing.

[fol. 1474] 3. Panhandle Eastern from time to time shall keep Phillips informed of the progress being made in the construction of its facilities and shall notify Phillips in writing of the date, according to its best judgment, when it

expects to commence the acceptance of deliveries of gas hereunder, such notice to be given not less than one hundred and twenty days and not more than one hundred and thirty-five days prior to the date on which such deliveries are expected to commence. If, in Phillips' judgment, it will be ready to commence deliveries hereunder on the date Panhandle Eastern is ready to accept deliveries of gas hereunder, it shall within fifteen days after the date of such notice so notify Panhandle Eastern in writing and, in the event of failure of Phillips to so notify Panhandle Eastern within said fifteen day period, then Panhandle Eastern may at its option terminate this contract at any time within thirty days thereafter by notice in writing.

4. Upon completion by Panhandle Eastern and East Ohio of the facilities contemplated in the East Ohio Contract, and upon the commencement of deliveries of gas by Panhandle Eastern to East Ohio on a firm basis thereunder, Phillips agrees to sell and deliver to Panhandle Eastern and Panhandle Eastern agrees to purchase and receive from Phillips, at the prices and on the terms and conditions hereinafter provided, such quantities of gas each day, as nearly as may be reasonably practicable, as Panhandle Eastern shall deliver on that day, on a firm basis, to East Ohio under said East Ohio Contract, as specified in paragraph 2 of Article I hereof. Prior to initial delivery by Phillips to Panhandle Eastern, and from time to time thereafter, Panhandle Eastern will notify Phillips of the daily quantities of gas it expects to deliver on a firm basis to East Ohio.

[fol. 1475] 5. Upon the termination of said East Ohio Contract and thereafter during the remainder of the term of this contract (or in the event the capacity of said Texas Line shall be increased by an amount sufficient to transport an additional volume of at least 50,000,000 cubic feet of gas per day, over and above its present capacity, during each calendar year and East Ohio for any reason shall not receive delivery of gas under said East Ohio Contract, then, upon the completion of the enlargement of said Texas Line and during the remainder of the term of this contract), Phillips agrees to sell and deliver to Panhandle Eastern and Panhandle Eastern agrees to purchase and receive

from Phillips 50,000,000 cubic feet of gas per day during each calendar year; provided that, if, during any calendar year, the total volume of gas delivered into Panhandle Eastern's compressor station near Liberal, Kansas, computed to the pressure base specified in this contract shall be less than 200,000,000 cubic feet per day, Panhandle Eastern shall not be required to purchase hereunder during such calendar year more than a volume of gas per day equal to 25% of such volume of gas per day delivered into said Liberal compressor station, and, in the event Panhandle Eastern shall for such reason purchase hereunder during any such calendar year less than 50,000,000 cubic feet of gas per day, Phillips shall have the right by written notice given to Panhandle Eastern at any time before June 30th of the succeeding calendar year, to reduce the volumes of gas per day that it is required to deliver hereunder during each year of the remainder of term of this contract to a volume of gas per day equal to the volume of gas per day required to be purchased by Panhandle Eastern during such calendar year as above provided. The term "per day", as used in this Paragraph, shall refer to the daily average [fol. 1476] during each calendar year (or parts of the calendar years at the beginning of such deliveries and upon the termination of this contract). The seasonal variation in the deliveries of such gas by Phillips and the receipts of such gas by Panhandle Eastern hereunder shall be in proportion to the seasonal variation in the receipts of all gas into the said Texas Line. It is understood that Panhandle Eastern will use its best efforts to accept deliveries of gas from Phillips currently at rates which will result in daily average receipts of gas hereunder, as hereinabove provided, and that, in the event the daily average receipts by Panhandle Eastern hereunder during any calendar year shall be more or less than the daily average hereinabove specified, the excess or deficiency shall be made up during the first six months of the following calendar year.

6. Phillips' obligation to deliver gas under the provisions of Paragraphs 4 and 5 of this Article III shall be limited to the volumes of gas that Phillips has available for sale from acreage owned and controlled by it in Moore County, Texas, it being understood that the term "available for sale", as herein used, shall be deemed to mean the volumes

of gas produced from such acreage over and above that required for light, fuel and power in the operation of Phillips' facilities in the Panhandle field and the development and operation of the leases from which the gas is produced and the performance of contracts heretofore made by Phillips for the sale of gas from such acreage and any renewals or extensions thereof except renewals or extensions of contracts for the sale of gas for use in the manufacture of carbon black or contracts for the sale of gas to pipe line companies. In this connection, it is contemplated that the gas available for sale from such acreage will be greatly in [fol. 1477] excess of the volumes required for deliver, under this Supplemental Contract but it is understood that Phillips shall not be deemed by this contract to have dedicated such acreage to the performance of this contract and shall only be required to retain, develop or operate acreage that a reasonably prudent operator would retain, develop or operate.

ARTICLE IV

(Term of Agreement)

This agreement shall extend from the date hereof and for a period of twenty years from the date of first delivery of gas by Phillips to Panhandle Eastern hereunder.

ARTICLE V

(Point of Delivery)

The point of delivery of all gas to be delivered by Phillips to Panhandle Eastern hereunder shall be at the suction side of Panhandle Eastern's Sneed Compressor Station, at a point on Panhandle Eastern's station site to be mutually agreed upon by Panhandle Eastern and Phillips.

ARTICLE VI

(Pressure)

Delivery of gas hereunder shall be made at the point of delivery at a minimum pressure of two hundred seventy-five pounds to the square inch gauge, and Phillips agrees to install and maintain such compressing equipment as shall be necessary to maintain such minimum delivery pressure.

Article VII

(Quality)

1. Phillips agrees that the gas delivered hereunder shall be natural gas produced from gas acreage owned and controlled by Phillips in the Panhandle field of Texas. Phillips [fol. 1478] shall have the right, before delivery to Panhandle Eastern, to remove a portion of the hydrocarbons from such gas: provided, however, that no natural gas delivered hereunder shall have a total heating value at the point of delivery below 1000 British t-ermal units per cubic foot.

2. All gas delivered by Phillips under the terms of this contract shall be merchantable dry gas and shall contain less than one grain of hydrogen sulphide per one hundred cubic feet of gas and less than twenty grains of total sulphur per one hundred cubic feet. Phillips agrees that the gas delivered hereunder shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the temperature and pressure of the gas at the point of delivery, and that water shall not be present in liquid phase.

3. In the event Phillips shall deliver, or tender for delivery, to Panhandle Eastern, gas not measuring up to the minimum standards of purity and quality set forth in this agreement, Panhandle Eastern (in addition to any other remedy it may have) shall have the right to refuse to accept deliveries of such gas until the deficiency or deficiencies are corrected and, if not corrected within ninety days, to terminate this contract without liability to Phillips except for the payment for gas theretofore delivered.

4. Phillips warrant- that the content of hydrogen sulphide, mercaptans and carbon dioxi le, respectively, of all gas delivered hereunder, will not exceed the content of hydrogen sulphide, mercaptans and carbon dioxide, respectively, of the gas going into Panhandle Eastern's Sneed Station from all other sources in the Panhandle field, and that no gas delivered hereunder shall be more corrosive or more harmful to Panhandle Eastern's facilities than the gas going into Panhandle Eastern's Sneed Station from all [fol. 1479] other sources in the Panhandle field and that no such gas shall cause any gas in Panhandle Eastern's

pipe line system to be unsaleable under any now existing contract of Panhandle Eastern. For violation of this warranty, Phillips shall be responsible to Panhandle Eastern in damages, and Panhandle Eastern may at its option refuse to accept further deliveries from Phillips until the condition or conditions causing such violation shall have been removed, and, if not removed within ninety days, Panhandle Eastern shall have the right to terminate this contract without liability to Phillips except for payment for gas theretofore delivered.

Article VIII

(Incorporation of Provisions of Original Contract)

The provisions of Paragraphs 11, 13, 14, 15, 16, 17 and 18 of said Original Contract, including all sub-paragraphs thereof, shall apply to all deliveries of gas hereunder and are incorporated herein as if herein set forth at length.

Article IX

(Elimination of Pulsation)

Phillips shall install and maintain at the inlet and outlet sides of the measuring station to be constructed by it hereunder such devices and equipment as may be reasonably necessary to control and, insofar as possible, eliminate pulsation to insure accuracy of measurement. Phillips from time to time shall consult with Panhandle Eastern's measuring engineer with respect to the type, design and sufficiency of such devices and equipment.

Article X

(Limitations of Rights and Obligations Under Original Contract)

1. Beginning on the date of first delivery of gas under the provisions of this Supplemental Contract, the provisions of Paragraph 8 (a) of said Original Contract, pro- [fol. 1480] viding for certain optional deliveries of gas from the Panhandle field, shall terminate and be of no further force or effect.

2. Beginning on the date of first delivery of gas under the provisions of this Supplemental Contract, Phillips shall

be obligated to sell and deliver and Panhandle Eastern shall be obligated to purchase and receive gas under the provisions of said Original Contract only when the volumes of gas which would (except for the operation of this Supplemental Contract) be required to be delivered and received under said Original Contract exceed the volumes of gas that are then being delivered under this Supplemental Contract, and only to the extent of such excess; provided that Phillips shall not be required to deliver any part of such excess nor to commence the development of the dedicated acreage and Panhandle Eastern shall not be required to receive any part of such excess nor to install facilities to receive gas from the dedicated acreage until such time as the volumes of gas that otherwise would have been required to be delivered and received from the dedicated acreage under the provisions of said Original Contract, as amended by this Supplemental Contract, during the next preceding 365 days, equal at least a daily average of 28,000,000 cubic feet.

Except as herein expressly modified and amended, said Original Contract shall be and remain in full force and effect.

The terms, covenants and provisions hereof shall extend to and be binding upon the parties hereto, their assigns and successors in interest.

[fol. 1481] Executed the day and year first above written.

Phillips Petroleum Company, by K. S. Adams, President. (Corporate Seal.)

Attest: B. F. Stradley, Secretary.

Panhandle Eastern Pipe Line Company, by W. G. Maguire, Chairman of the Board. (Corporate Seal.)

Attest: Leith V. Watkins, Secretary.

[fol. 1482] EXHIBIT "A"

Contract

Agreement made and entered into this 5th day of April, 1943, by and between Phillips Petroleum Company, a Dela-

ware corporation, hereinafter referred to as "Phillips" and Panhandle Eastern Pipe Line Company, a Delaware corporation, hereinafter referred to as "Panhandle Eastern."

Witnesseth:

1. Panhandle Eastern is the owner of a gas pipe line system which secures the greater part of its supply of gas in the Hugoton gas field located in Kansas, Oklahoma and Texas and the Panhandle field located in Texas. Phillips represents that it is the owner of valid and subsisting gas leases covering one hundred seventy-five thousand (175,000) acres of land (hereinafter referred to as "the dedicated acreage") in the Hugoton field within an area in Texas County, Oklahoma, and the Northern parts of Sherman and Hansford Counties, Texas, which area is described as follows:

All of the following townships in Texas County, Oklahoma: Township Four North, Range Sixteen East (T. 4 N. R. 16 E.); Township Four North, Range Seventeen East (T. 4 N. R. 17 E.); Township Three North, Range Fifteen East (T. 3 N. R. 15 E.); Township Three North, Range Sixteen East (T. 3 N. R. 16 E.); Township Three North, Range Seventeen East (T. 3 N. R. 17 E.); Township Two North, Range Fourteen East (T. 2 N. R. 14 E.); Township Two North, Range Fifteen East (T. 2 N. R. 15 E.); Township Two North, Range Sixteen East (T. 2 N. R. 16 E.); Township Two North, Range Seventeen East (T. 2 N. R. 17 E.); Township One North, Range Twelve East (T. 1 N. R. 12 E.); Township One North, Range Thirteen East (T. 1 [fol. 1483] N. R. 13 E.); Township One North, Range Fourteen East (T. 1 N. R. 14 E.); Township One North, Range Fifteen East (T. 1 N. R. 15 E.); Township One North, Range Sixteen East (T. 1 N. R. 16 E.); and all of that part of Sherman and Hansford Counties, Texas, bounded as follows: Beginning on the south line of Township One North, Range Sixteen East (T. — N. R. 16 E.) Texas County, Oklahoma, at the intersection of the right-of-way of the C. R. I. & P. Railway Company and the Texas-Oklahoma State Line, thence southwest along the right-of-way to the intersection of the same with the south line of Section 53, Block P. H. & G. N. Railway Company Survey, Hansford County, Texas,

thence West along the section line to the center of the north line of Section 105, Block 2, G. H. & H. Railway Company's Survey, Hansford County, Texas, thence south along the north and south center section line of said Section 105 to the south line of said Section 105, thence west along the section line to the southwest corner of Section 57, G. H. & H. Railway Company's Survey, Hansford County, Texas, thence north along the section line to the northwest corner of said Section 57, thence west along the section line to the northwest corner of Section 9, Block 2, G. H. & H. Railway Company's Survey, Sherman County, Texas, thence a jog south along the west line of said Section 9 to the northeast corner of Section 7, Block 1-C, G. H. & H. Railway Company's Survey, Sherman County, Texas, thence north along the section line to the east quarter corner of Section 136, Block 1-C, G. H. & H. Railway Company's Survey, Sherman County, Texas, thence west along the east and west center line of said Section 136 to the cen- [fol. 1484] ter of said section, thence north along the north and south center line of said Section 136 to the north line of said Section 136, thence west a jog to the west line of Section 18, Block 1, Public Free School Lands, Sherman County, Texas, thence north along the west line of said Section 18 to the north west corner of said Section 18, thence east along the Oklahoma-Texas State Line to the point of beginning.

and Panhandle Eastern is the owner of gas leases covering approximately 50,000 acres within said area. It is understood that the dedication of Phillips' said gas leases within said area above described to Panhandle Eastern's pipe line system, as hereinafter provided, will afford Panhandle Eastern a needed additional reserve of *fas* for its present and anticipated markets and that the gathering, processing and delivering of gas into Panhandle Eastern's pipe line system by Phillips, as hereinafter provided, will assure to Panhandle Eastern a supply of gas from Phillips' dedicated acreage and from Panhandle Eastern's acreage within the area above described with a minimum expenditure by Panhandle Eastern for development, gathering and processing o*g* gas. Phillips hereby dedicates all of its lease within the area above described to the performance of this contract and agrees to sell and deliver to Pan-

handle Eastern all gas produced from said dedicated acreage, as hereinafter provided; and further agrees to process for Panhandle Eastern, in accordance with the terms of this contract, all gas produced from Panhandle Eastern's acreage within said area above described.

2. Subject to the provisions of this contract, Phillips agrees to sell and deliver to Panhandle Eastern and Pan-
[fol. 1485] handle Eastern agrees to purchase and receive from Phillips twenty-eight million (28,000,000) cu. ft. of gas per day during each calendar year when the total volume of gas delivered into Panhandle Eastern's pipe line system does not exceed one hundred eighty million (180,000,000) cu. ft. per day; and sixty per cent (60%) of the next one hundred million (100,000,000) cu. ft. of gas per day delivered into Panhandle Eastern's pipe line system during any calendar year in excess of one hundred eighty million (180,000,000) cu. ft. per day; and seventy-five per cent (75%) of the next fifty million (50,000,000) cu. ft. per day delivered into Panhandle Eastern's pipe line system during any calendar year in excess of two hundred eighty million (280,000,000) cu. ft. per day; and eighty per cent (80%) of the next twenty-five million (25,000,000) cu. ft. per day delivered into Panhadle Eastern's pipe line system during any calendar year in excess of three hundred thirty million (330,000,000) cu. ft. per day; and eighty-five per cent (85%) of all gas delivered into said pipe line system during any calendar year in excess of three hundred fifty-five million (355,000,000) cu. ft. per day. The term "per day" as herein used shall refer to the daily average during each calendar year, (or parts of the calendar years at the beginning and termination of this contract). The seasonal variation in the deliveries of gas by Phillips and the receipts of gas by Panhandle Eastern hereunder shall be in proportion to the seasonal variation in the receipts of all gas into Panhandle Eastern's pipe line. It is understood that Panhandle Eastern will use its best efforts to accept deliveries of gas from Phillips currently at rates which will result in daily average receipts of gas hereunder, as herein-
[fol. 1486] above provided, and that, in the event the daily average receipts by Panhandle Eastern hereunder during any calendar year shall be more or less than the daily averages hereinabove specified, the excess or deficiency shall be made up during the first six months of the following

calendar year, but such excess or deficiency shall not be considered in any year during which it is made up for the purpose of determining the obligation of Panhandle Eastern to purchase and receive gas under the provisions of this paragraph. Except for the deliveries of gas from other sources as provided in Paragraphs 7, 8, (a) and 8 (b) hereof, the obligations of the parties hereto to deliver and receive gas under this contract shall be limited to the volumes that may be produced from the dedicated acreage.

3. (a) The delivery point for all gas delivered hereunder from the dedicated acreage shall be a point to be agreed upon by the parties hereto within six miles from Guymon, Oklahoma. Panhandle Eastern agrees to construct a pipe line from its Liberal Station to said point of delivery of sufficient size and capacity to receive the gas to be delivered hereunder and Phillips agrees to lay all gathering lines to its wells on the dedicated acreage and to construct a plant for the recovery of hydrocarbons and a dehydrating plant for the dehydration of the gas to be delivered hereunder, and agrees to gather and deliver the gas to Panhandle Eastern at said point of delivery. Phillips also agrees that it will, at the option of Panhandle Eastern, provide capacity in said plants for the recovery of hydrocarbons from, and the dehydration of gas produced from Panhandle Eastern's [fol. 1487] acreage within the area hereinabove described, and will process such gas in said plant. Panhandle Eastern shall advise Phillips from time to time of its plans for development in order to enable Phillips to provide capacity in said plant. The degree of hydrocarbon recovery from, and the dehydration of, such gas shall be determined by Phillips and shall be the same as for all other gas processed through said plants and the recoverable hydrocarbon content, and the percentage of loss in volume due to processing and use for plant facilities, shall be assumed to be the same as for all other gas processed through said plant. Phillips agrees to deliver to Panhandle Eastern at said processing plant one-half (½) of the hydrocarbon products recovered by Phillips from the gas produced from Panhandle Eastern's acreage, as above provided, and, as consideration for processing such gas. Phillips shall retain for itself one-half (½) of such hydrocarbon products so recovered.

(b) It is understood that whenever Panhandle Eastern shall elect to have gas from any of its wells on acreage

within the area above described processed in Phillips' plants, as above provided, and Phillips shall provide the capacity in said plants therefor, the gas from such wells shall continue to be processed through said pplants for a minimum period of five (5) years. The gas from Panhandle Eastern's acreage processed in Phillips' plants, as hereinabove provided, shall be delivered to Phillips at the recovery plant and the processed gas shall be redelivered to Panhandle Eastern at the same point of delivery as the point of delivery of Phillips' gas, as hereinabove provided; provided [fol. 1488] that it is anticipated that Phillips' gathering system and facilities for gathering gas will have excess capacity over and above Phillips' requirements and Panhandle Eastern shall have the option of connecting its gathering lines to Phillips' gathering system and using such excess capacity by Paying to Phillips the average cost per thousand Cu. Ft. of gas for handling such gas through Phillips' gathering system and facilities, the gas so handled to bear its proportionate share of line losses from Phillips' gathering system.

4. Phillips agrees that the gas to be delivered by it from the dedicated acreage, as hereinabove provided, shall be delivered by it during the first five (5) years after first delivery of gas hereunder at pressures of not less than two hundred and fifty (250) lbs. per sq. in.; during the second five (5) years at pressures of not less than two hundred (200) lbs. per sq. in.; and thereafter at pressures not less than one hundred (100) lbs. per sq. in. Upon request by Panhandle Eastern, Phillips will install and maintain compression equipment to compress the gas to higher pressures, it being understood that, in such case, Panhandle Eastern shall pay Phillips the cost of operating such compression equipment plus eight per cent (8%) per annum on the depreciated investment, payment to be made monthly with current payments for gas.

5. (a) Phillips agrees that it will develop the dedicated acreage as needed for the performance of this contract and that in good standing; provided that Phillips shall not be required to drill any wells which would not be drilled by a reasonably prudent operator under similar circumstances [fol. 1489] and Phillips shall not be required to retain by payment of delay rentals acreage which, in its judgment, has been condemned by development. Before releasing any

acrage which has, in the judgment of Phillips been condemned, Phillips shall notify Panh*na*-le Eastern and, upon demand by Panhandle Eastern, assign to Panhandle Eastern the gas rights under leases covering such acreage. It is understood that, for the purpose of consolidating the dedicated acreage, Phillips shall have the right at all times to exchange or trade dedicated acreage for other acreage within the area hereinabove described of equal area which, in the judgment of Phillips, is of equal value for production of gas as the acreage exchanged therefor. Upon such exchange, the dedicated acreage so traded or exchanged by Phillips shall be released from the dedication hereunder and the acreage so acquired by Phillips shall be substituted therefor and shall be a part of the dedicated acreage and subject to the provisions of this contract to the same extent as if originally covered by the dedication herein. It is further understood that Phillips proposes to acquire additional acreage within the area hereinabove described other than by exchange of dedicated acreage. In the event of the acquisition of such additional acreage, Phillips shall have the right to substitute such additional acreage for dedicated acreage along the south boundary of the area hereinabove described to the end that, as the dedicated acreage shall be*come* further consolidated in the northern part of the area hereinabove described by such additional acquisitions of acreage, leases along the southern boundary of the [fol. 1490] area hereinabove described shall be released from the dedication hereunder; provided that such substitutions of additional acreage shall not operate to reduce the total area of the dedicated acreage.

(b) Phillips contemplates that, in the development and operation of the dedicated acreage, it may conduct recycle operations, that is to say, it may produce gas from the dedicated acreage in excess of the quantities currently required by Panhandle Eastern, and, as to such excess gas, recover hydrocarbons therefrom and return the gas to the producing formation. Such recycle operations shall be conducted in such manner as not to cause underground waste or impair the performance of this contract by Phillips.

6. Delivery of gas hereunder from the dedicated acreage shall be commenced as soon as Phillips shall have drilled wells productive of gas and the parties hereto shall have in-

stalled facilities to effect such deliveries. Each party hereto will at all times use its best efforts to obtain any necessary consents and to obtain all necessary materials and to install all necessary facilities for the performance of this contract. However, it is recognized that the commencement of deliveries of gas hereunder may be delayed by the inability of the parties hereto to obtain necessary materials due to the present national emergency. Without relieving Phillips of its obligations to use its best efforts at all times to obtain all necessary materials, it is agreed that, in the event Phillips shall be unable during the national emergency to obtain materials for the construction of its recovery plant and dehydration plant to process gas from the dedicated acreage, as hereinabove provided, but Phillips and Panhandle Eastern shall respectively be able to secure the necessary materials [fol. 1491] for the drilling of wells by Phillips and the construction of necessary connecting lines by Phillips and Panhandle Eastern, respectively, for the delivery of gas from wells on the dedicated acreage into Panhandle Eastern's pipe line system, Panhandle Eastern agrees that until such time as materials for the recovery plant and dehydration plant can be obtained by Phillips and such plants constructed, Panhandle Eastern will receive the gas hereunder produced from the dedicated acreage and will, to the extent of its then capacity available therefor, at its Liberal Plant, recover hydrocarbons from, and dehydrate, such gas for Phillips and will deliver to Phillips at said plant one-half (½) of the hydrocarbons so recovered. In such case, the degree of recovery of hydrocarbons from the gas delivered by Phillips to Panhandle Eastern from the dedicated acreage shall be determined by Panhandle Eastern and shall be the same as for all other gas processed through said plant and the recoverable hydrocarbon content and the percentage of loss in volume due to processing and use for plant facilities shall be assumed to be the same as for all other gas processed in said plant.

7. It is understood that Phillips has additional gas acreage in the Hugoton field outside of the area hereinabove described and it is agreed that, at any time prior to delivery of gas hereunder to Panhandle Eastern from the dedicated acreage, Phillips shall have the right to drill any well or wells on such acreage in the Hugoton field outside the area hereinabove described and deliver the gas therefrom

[fol. 1492] into Panhandle Eastern's pipe line against the working pressure of said line. Any wells so drilled and connected into Panhandle Eastern's pipe line system shall thereafter be deemed to be dedicated to the supplying of gas to Panhandle Eastern's system during the life of such wells.

8.(a) It is understood that a part of Panhandle Eastern's pipe line system, hereinafter referred to as its "Texas Line", extends from Panhandle Eastern's Liberal Station into the Panhandle gas field of Texas and near the south part of the Hugoton field in Sherman and Hansford Counties, Texas. That part of the south part of the Hugoton field lying south of the dedicated acreage will be hereinafter referred to as the "South Hugoton field". It is further understood that, through its ownership of a large number of leases and gas purchase contracts, Phillips is the owner of extensive gas reserves in the Panhandle field and South Hugoton field and that Phillips' election to deliver gas into Panhandle Eastern an additional reserve of gas for the supplying of its future markets. It is agreed that Phillips shall have the option, to be exercised at anytime within two (2) years from the date of this contract, to con-ect into Panhandle Eastern's Texas line sweet gas wells designated by Phillips up to a total number of twenty (20) such wells in the Panhandle field and/or South Hugoton field and, in such case, Panhandle Eastern shall purchase and receive and Phillips shall sell and deliver to Panhandle Eastern gas from such wells in its natural state. The gas delivered from such wells shall be delivered against the working pres-[fol. 1493] sures in Panhandle Eastern's said Texas line. Phillips shall have the right, at any time, upon six months notice in writing to Panhandle Eastern, to discontinue the delivery of gas in its natural state from such sweet gas wells, provided Phillips shall have exercised the option hereinafter provided fro or said option shall have expired. Phillips shall also have the option for a period of five (5) years from date hereof to elect to deliver into Panhandle Eastern's said Texas line residue gas (gas from which recoverable hydrocarbons have been removed) from wells owned by it and under contract to it in the Panhandle field and/or the South Hugoton field; provided that, in the event Phillips shall make such election, Phillips shall deliver such gas into Panhandle Eastern's said Texas line against the working pres-

sure in said line and, in such event, Phillips guarantees that it will deliver into Panhandle Eastern's said Texas line, and Panhandle Eastern agrees to purchase and receive, twenty million (20,000,000) cu. ft. of residue gas per day available from such wells owned and under contract to Phillips in said fields for a period of five (5) years from date of first delivery of said gas, thirty million (30,000,000) cu. ft. of such gas per day during the next five (5) years and forty million (40,000,000) cu. ft. of such gas per day during the next ten (10) years. It is understood that residue gas "available from such wells, owned and under contract to Phillips in said fields", as that phrase is hereinabove used, shall be deemed to mean all residue gas from such wells over and above that required for operation of Phillips' facilities, the operation of the leases from which the gas is produced and contracts [fol. 1494] of sale made by Phillips prior to the date of such election other than to carbon black companies and other pipe line companies. In the event Phillips shall elect to deliver and grarantees residue gas into Panhandle Eastern's Texas line, as hereinabove provided, such gas shall meet all of the requirements of gas delivered from the dedicated acreage as hereinafter provided, except that Phillips shall not dehydrate such gas, and Phillips further warrants that the content of hydrogen sulphide, mercaptans and carbon dioxide, respectively, of such gas, will not exceed the content of hydrogen sulphide, mercaptans and carbon dioxide, respectively, of the gas going into Panhandle Eastern's Sneed Station from all other sources in the Panhandle field, and that such gas will not be more corrosive nor more harmful to Panhandle Eastern's pipe line and facilities than such other gas going into such Sneed Station, and Phillips shall be responsible for any damages caused by any violation of this warranty. If the delivery of residue gas by Phillips into Panhandle Eastern's Texas Line, as herein provided, shall cause any gas in Panhandle Eastern's Pipe line system to be unsaleable under any now existing contract of Panhandle Eastern, or its inclusion shall be in violation of any existing contract of Panhandle Eastern, or detrimental to Panhandle Eastern's pipe line system, then Panhandle Eastern need not accept delivery of any such residue gas or of any more of such residue gas, as the case may be. It is understood that Phillips' two options, as hereinabove provided, that is to say, the option to deliver sweet gas in its natural

state from designated wells, and the option to deliver and [fol. 1495] guarantee supplies of residue gas, as above provided, shall not be concurrent, but that, if Phillips shall elect to deliver sweet gas in its natural state from designated wells, as above provided, and shall thereafter elect to deliver residue gas, as above provided, the deliveries of sweet gas in its natural state from designated wells shall thereafter cease.

(b) It is understood and agreed that, after deliveries of gas from the dedicated acreage at the point of delivery specified in paragraph 3(a) hereof shall have commenced, then, so long as the full one hundred seventy-five thousand (175,000) acres of dedicated acreage shall be retained by Phillips, Phillips shall have the right at any time to supplement its deliveries of gas from the dedicated acreage by delivery to Panhandle Eastern, at the said delivery point for gas from the dedicated acreage, gas from sources in the Hugoton and/or Panhandle fields outside the dedicated acreage; provided that the total deliveries of gas by Phillips at said delivery point shall not exceed the quantities of gas specified in Paragraph 2 hereof, less quantities of gas that Phillips is delivering under other provisions of this contract at other points of delivery; and provided further that, if and when Phillips shall have elected to deliver any such supplemental quantities of gas at said delivery point from sources outside the dedicated acreage, Phillips guarantees to continue the daily average rate of such deliveries from such outside sources for a period of twenty (20) years from the date when such delivery shall be commenced, except that equal quantities of gas delivered from wells thereafter [fol. 1496] drilled in the dedicated acreage shall be deducted from the quantities of such guaranteed deliveries. The gas so delivered at said delivery point from sources outside the dedicated acreage shall be delivered at pressures specified in paragraph 4 hereof and the quality of such gas shall meet all requirements, as hereinafter specified, for the quality of gas delivered from the dedicated acreage and all of the requirements for quality of gas delivered under the provisions of paragraph 8(a) above, and the warranties in paragraph 8(a) above shall be applicable also to such gas.

9. Notwithstanding any other provisions in this contract to the contrary, Phillips' obligation to deliver gas here-

under (except as to its guaranteed deliveries of residue gas under the provisions of paragraph 8 above) shall be limited to the quantities of gas that can be legally produced from wells drilled by Phillips under its obligations for the development of the dedicated acreage as provided in paragraph 5 hereof and from wells connected to Panhandle Eastern's line under the provisions of paragraph 7 hereof and designated sweet gas wells connected to Panhandle Eastern's Texas line under the provisions of paragraph 8(a) hereof.

10. All gas delivered by Phillips under the terms of this contract shall contain less than one (1) grain of hydrogen sulphide per one hundred (100) cu. ft. of gas and less than twenty (20) grains of total sulphur per one hundred (100) cu. ft. The heating value of all gas delivered hereunder shall in no event, at the time and place of delivery, be less than nine hundred and fifty (950) British Thermal Units per [fol. 1497] cu. ft. and, in the event the heating value of such gas shall be less than nine hundred and seventy-five (975) British Thermal Units per cu. ft., the price of such gas, as hereinafter provided, shall be decreased to that proportionate part of such price that the British Thermal Unit content of such gas per cu. ft. bears to nine hundred and seventy-five (975) All gas delivered by Phillips from the dedicated acreage and all supplemental deliveries of gas delivered at the same delivery point, as provided in paragraph 8(b) above, shall by dehydrated by Phillips to a point sufficient that formation of hydrates in the line will not interfere with the transportation of such gas through Panhandle Eastern's pipe line to its Liberal Station.

11. (a) Panhandle Eastern agrees to pay to Phillips for all gas delivered hereunder, whether in its natural state or with recoverable hydrocarbons removed, as hereinabove provided, four (4) cents per thousand cu. ft. for all gas delivered during the first five (5) years after first delivery of gas hereunder; and at the end of such five (5) year period and each succeeding five (5) year period, the price for all such gas delivered during the following five (5) year period shall be increased one-half (½¢) cent per one thousand (1,000) cu. ft.; provided that after the expiration of fifteen year from the date of the first delivery of gas hereunder either Phillips or Panhandle Eastern may make written request to the other for modification of the provisions of

Paragraphs 4 and 11 hereof, but not in relation to Para-
[fol. 1498] graph 10 hereof. If Phillips and Panhandle Eastern are unable to agree upon such modifications within a period of three months from the date of the first written request, a person, firm, or corporation shall be selected by the Chief Justice of the Supreme Court of Delaware to determine whether the provisions of such paragraphs are then fair and reasonable provisions upon the premise that this contract as originally executed, including such provisions, were fair and reasonable both as to Phillips and to Panhandle Eastern. In the event it is determined that the provisions of such paragraphs are unfair and unreasonable provisions, then the person, firm or corporation so selected shall prescribe modifications of Paragraphs 4 and 11 deemed to be fair and reasonable and such prescription shall operate to modify this contract in such respects and Phillips and Panhandle Eastern shall be bound thereby. The selection by the Chief Justice of the Supreme Court of Delaware shall be made from a list of four names—two to be submitted anonymously by Phillips and two to be submitted anonymously by Panhandle Eastern. Either Phillips or Panhandle Eastern may make written request to the other for modifications of the provisions of Paragraphs 4 and 11 hereof, but not in relation to paragraph 10 hereof, after the expiration of each five-year period from the date upon which the immediately prior determination has been made and, in case Panhandle Eastern and Phillips are unable to agree upon modifications, such modifications shall be prescribed as hereinabove provided. These prices are subject to reduction as provided in Paragraph 10 above. (b) In other to protect the parties hereto from too great burden under the price provisions of this contract in the event of abnormal inflation or deflation of prices of commodities generally, it is agreed that in the event of the happenings
[fol. 1499] of the contingencies hereinafter mentioned, an adjustment of the prices to be paid by Panhandle Eastern to Phillips for gas hereunder shall be made as herein provided. Using as a standard the Federal Bureau of Labor's statistical Index of Wholesale Prices of all Commodities, based upon 1926 prices as 100% and defining the word "point" as used herein to mean 1% of the 1926 prices, it is agreed that no adjustment shall be made unless and until the said Index shall be more than thirty (30) points above or below

the level indicated by said Index on the date of this contract, and unless and until Panhandle shall have had a general increase or decrease in the rates for gas from its pipe line system. However, if, when the said Index is more than thirty (30) points above the level indicated by said Index on the date of this contract (hereinafter referred to as "the present level") the Federal Power Commission, or other body or court having jurisdiction, shall grant to Panhandle Eastern a general increase in its rates for gas sold from its pipe line system, it shall be conclusively presumed that such increase is due to inflation and the prices for gas hereunder shall be increased in proportion to such increase in Panhandle Eastern's rates; and if, when the said Index is more than thirty (30) points below the present level, said Commission, or other body or court, shall require a general decrease in Panhandle Eastern's rates for gas sold from its pipe line system, it shall be conclusively presumed that such decrease is due to deflation and the prices for gas hereunder shall be reduced in proportion to such decrease in Panhandle Eastern's rates. Further proportionate adjustments in the prices hereunder shall be made in the same manner whenever a general increase or decrease in Panhandle Eastern's rates shall be put into effect; provided, that when-
[fol. 1500] ever the said Index shall be not more than thirty (30) points above or below the present level, the prices hereinabove specified shall again be in effect without adjustment.

12. Panhandle Eastern's obligation to purchase and receive gas, as hereinbefore specifically provided, will be subject to all valid laws and regulations and any ratable purchase obligations that Panhandle Eastern may have under its present existing gas purchase contracts. However, Panhandle Eastern agrees that any failure by it to purchase the quantities of gas hereinbefore stipulated due to any ratable purchase obligations it may have under any present existing contracts shall be only to the extent that such failure is made unavoidable by a final and binding decree construing its ratable purchase obligations under present existing contracts; provided that a final and binding decree construing any type of ratable purchase provision shall be binding upon the parties hereto in respect of all provisions of the same type. Panhandle Eastern's obligation to purchase and receive gas, as hereinbefore specifically provided, will also

be subject to its right to take gas from leases now owned by it and not heretofore developed to the extent necessary to enable Panhandle Eastern to develop such leases owned by it in a regular spacing pattern; provided that in Texas County, Oklahoma and Sherman and Hansford Counties, Texas, Panhandle Eastern's units shall not be smaller than those established by Phillips in the development of the dedicated acreage and the rate of development of Panhandle Eastern's acreage shall not be in excess of that rate which [fol. 1501] bears the same proportion to the rate of development of the dedicated acreage that the total number of acres of leases, now owned by Panhandle Eastern in said counties and not heretofore developed, bears to the total number of acres of the dedicated acreage.

13. Phillips will pay all ad valorem taxes on the leases and on its properties and all present gross production taxes, severance taxes and other excise taxes upon or in respect to the gas delivered hereunder up to the point of delivery of the gas to Panhandle Eastern. All increases in such present gross production taxes, severance taxes and excise taxes upon or in respect of the gas delivered hereunder or the production, transportation or handling thereof up to the point of delivery of the gas in Panhandle Eastern shall be borne one-fourth (¼) by Phillips and three-fourths (¾) by Panhandle Eastern; provided, that all excise taxes upon or in respect of the manufacture or recovery of hydrocarbons by Phillips shall be borne by the parties hereto in the proportion that they receive the hydrocarbon recovered. Excise taxes as used in this paragraph shall not include any taxes based on income profits or the right to exercise the corporate franchises of Phillips, all of which and all increases of which shall be paid by Phillips.

14. (a) The unit of measurement of all gas delivered hereunder (except for computation of heating value as hereinafter provided) shall be one (1) cu. ft. at an absolute pressure of sixteen and four tenths (16.4) pounds per sq. in. at a temperature of sixty degrees (60°) Fahrenheit, computed in accordance with Boyle's Law governing pressure and volume of gasses (with corrections for deviation as [fol. 1502] hereinafter provided) and at a flowing temperature assumed to be sixty degrees (60°); provided that either party at its option may at any time install a recording thermometer or thermometers to record the temperature

of the gas flowing through the meters, in which event the arithmetic average of the temperatures recorded shall be used in computing deliveries.

(b) The unit of volume for determining the heating value per cubic foot of the gas delivered hereunder shall be one cubic foot of dry gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure equivalent to that of thirty inches of mercury at thirty-two degrees (32°) Fahrenheit.

(c) The specific gravity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery and thereafter at least once each month at each point of delivery of gas by Phillips to Panhandle Eastern hereunder and the results of each such determination at each such point shall be used in computing the volume of gas delivered at such point subsequent to the making of such determination and until the next determination shall have been made.

(d) The deviation of the gas from Boyle's Law, at the pressure and temperatures at which the gas is metered, shall be determined by tests or analysis at intervals of three months or as much oftener as is found necessary. The method of making such tests or analyses shall be determined by mutual agreement but, in the event of the inability of the parties to agree, shall be made by a laboratory selected by the parties, whose tests or analyses shall be accepted as final. The results of each such determination shall be used in computing the volumes of gas delivered [fol. 1503] hereunder subsequent to the making of such determination and until the next determination shall have been made.

15. (a) Phillips shall install, maintain and operate at its own expense, meters through which the gas delivered hereunder shall be measured. Panhandle Eastern shall have access to such measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Phillips. Phillips will mail to Panhandle Eastern for checking and calculation all meter charts used in the measurement of gas delivered hereunder within five days after such charts are removed from the meter. Such charts shall be returned to Phillips within ten days thereafter.

(b) Panhandle Eastern may install, maintain and operate such check measuring equipment as it shall desire.

(c) Phillips and Panhandle Eastern shall each have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating, or adjusting, done in connection with the measureing equipment used in measureing deliveries hereunder, and shall be given reasonable notice thereof in order that it may be present.

(d) If for any reason Phillips' meters are out of service or out of repair so that the quantity of gas delivered is not [fol. 1504] correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon on the basis of the best data available, using the first of the following methods which is feasible:

(1) By using the registration of any check meter or meters if installed and accurately registering;

(2) By correcting the error if the percentage or error is ascertainable by calibration, test or mathematical calculations; or

(3) By estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(e) The accuracy of the measuring equipment at the places of delivery shall be verified at reasonable intervals, and whenever requested by Panhandle Eastern.

(f) If, upon any test, measuring equipment is found to be not more than two per cent fast or slow, previous readings of such equipment shall be considered correct in computing the deliveries of gas hereunder but such equipment shall be adjusted propertly at once to record accurately. If, upon any test, any measuring equipment shall be found to be inaccurate by an amount exceeding two per cent, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or [fol. 1505] agreed upon, but in case the period is not known definitely or agreed upon such correction shall be for a period covering the last half of the time elapsed since the date of the last test, but not exceeding a period of fifteen (15) days.

(g) In the computations of deliveries of gas from the charts and records of measuring equipment, Panhandle Eastern and Phillips shall follow the procedure recommended in current Codes of American Gas Association.

(h) Both Phillips and Panhandle Eastern shall cause to be perserved for a period of at least six (6) years all test data, charts and other similar records.

16. Phillips shall render to Panhandle Eastern on or before the tenth of each calendar month a statement for all gas delivered to Panhandle Eastern hereunder during the preceding calendar month and payment for such gas shall be made by Panhandle Eastern to Phillips on or before the 25th day of the month during which such statement is rendered.

17. In order to enable Phillips to conduct its operation properly, Panhandle Eastern will notify Phillips each month of its estimates of requirements of gas during each of the following six (6) months.

[fol. 1506] 18. Neither party shall be liable for failure of performance due to causes beyond its control.

The terms, covenants and provisions hereof shall extend to and be binding upon the parties hereto, their assigns and successors in interest.

Executed the day and year first above written.

Phillips Petroleum Company, By —— ——, President.

Attest: —— ——, Secretary.

Panhandle Eastern Pipeline Company. By —— ——, Chairman of the Board.

Attest: —— ——, Secretary.

[fols. 1507-1518] Report and order of Commission (Order No. 19514) Omitted. Printed side page, 18 ante.

[fol. 1519] EXHIBIT 7

Phillips Petroleum Company

Bartlesville, Oklahoma

April 25, 1944.

Phillips Petroleum Company

Misc. 9300A

Attention Mr. N. Buddrus

Panhandle Eastern Pipe Line Company, 4205 Field Building, Chicago, Illinois.

GENTLEMEN:

Reference is hereby made to the Gas Contract dated April 5, 1943, between Phillips Petroleum Company as Seller and Panhandle Eastern Pipe Line Company as Buyer, providing for the dedication of acreage in the Hugoton Field and the sale of gas by Phillips to Panhandle Eastern, hereinafter referred to as the "Original Contract", and modifications thereof as provided in the Supplemental Contract dated April 5, 1943, between the same parties, hereinafter referred to as the "Supplemental Contract" and in the Processing Contract dated May 25, 1943, between the same parties, hereinafter referred to as the "Processing Contract".

The Original Contract as modified by the Supplemental Contract provides that the parties shall not be required to commence the installation of facilities until the happening of certain contingencies stated in the proviso in Paragraph 2 of Article X of the Supplemental Contract. It is now anticipated that these contingencies will occur in the summer of 1944, and Phillips and Panhandle Eastern now agree to proceed immediately to use their best efforts to procure all necessary governmental authority and all materials and to do all things necessary to commence delivery of gas from the dedicated acreage at the earliest practicable date in accordance with the Original Contract as modified by Article X of the Supplemental Contract (except for the elimination of the proviso in Paragraph 2 of Article X as hereinafter provided), and as modified by this letter of agreement.

Subject to the acquiring of necessary authority and materials as hereinafter provided, said Original Contract, supplemental Contract and Processing Contract are hereby modified and amended as follows:

[fol. 1520] 1. Paragraph 2 of Article X of said Supplemental Contract is hereby modified and amended to read as follows:

> "2. Beginning on the date of first delivery of gas under the provisions of this Supplemental Contract, Phillips shall be obligated to sell and deliver and Panhandle Eastern shall be obligated to purchase and receive gas under the provisions of said Original Contract only when the volumes of gas which would (except for the operation of this Supplemental Contract) be required to be delivered and received under said Original Contract exceed the volumes of gas that are then being delivered under this Supplemental Contract, and only to the extent of such excess."

2. Paragraph 3 (a) of said Original Contract is hereby modified and amended to read as follows:

> "3. (a) The delivery point for all gas delivered hereunder from the dedicated acreage shall be a point designated by Phillips in or near Section Seven (7), Block One (1), P. S. L. Survey, Hansford County, Texas, and not more than fifteen (15) miles from Panhandle Eastern's Mansford compressor station. Panhandle Eastern agrees to construct either a twenty-inch pipe line or a twenty-two-inch pipe line from said delivery point to the intake of its Mansford compressor station, and Phillips agrees to lay all gathering lines to its wells on the dedicated acreage and to construct a plant for the recovery of hydrocarbons and a dehydrating plant for the dehydration of the gas to be delivered hereunder, both such plants to be located adjacent to said delivery point, and agrees to gather and deliver the gas to Panhandle Eastern at said delivery point. Phillips also agrees that it will, at the option of Panhandle Eastern, provide capacity in said plants for the recovery of hydrocarbons from, and the dehydration of, gas produced from Panhandle Eastern's acreage within the area hereinabove described, and will process such

gas in said plant. Panhandle Eastern shall advise Phillips from time to time of its plans for development in order to enable Phillips to provide capacity in said plant. The degree of hydrocarbon recovery from, and [fol. 1521] the dehydration of, such gas shall be determined by Phillips and shall be the same as for all other gas processed through said plants and the recoverable hydrocarbon content, and the percentage of loss in volume due to processing and use for plant facilities, shall be assumed to be the same as for all other gas processed through said plant. Phillips agrees to deliver to Panhandle Eastern at said processing plant one-half (½) of the hydrocarbon products recovered by Phillips from the gas produced from Panhandle Eastern's acreage, as above provided, and, as consideration for processing such gas, Phillips shall retain for itself one-half (½) of such hydrocarbon products as recovered."

3. Paragraph 4 of said Original Contract is hereby modified and amended to read as follows:

"4. Phillips agrees that the gas to be delivered by it from the dedicated acreage, as hereinabove provided, shall be delivered at the point hereinafter described at pressures not less than one hundred (100) pounds per square inch gauge below the average of the shut-in pressures of the wells from which the gas is delivered and in any event not less than one hundred (100) pounds per square inch gauge. Until the construction of a compressor station as hereinafter provided in this paragraph, the point at which such minimum pressures shall be maintained shall be the point of delivery of the gas by Phillips to Panhandle Eastern and, thereafter, shall be the intake of such compressor station. Panhandle Eastern agrees that when, in order to transmit the gas through Panhandle Eastern's pipe line, it shall become necessary to compress the gas to pressures higher than the pressures maintained by Phillips as above provided, the compressers shall be installed on the upstream or well side of, and adjacent to, Phillips' gasoline plant, and Phillips agrees that its gasoline plant shall at that time be of such construction that it [fol. 1522] will operate safely at the exhaust pressures of such compressors up to five hundred and fifty (550)

pounds per square inch gauge. The compressors installed on the upstream or well side of Phillips' gasoline plant to increase the pressures above those maintained by Phillips as above provided shall be installed and operated by Panhandle Eastern; provided that, upon request by Panhandle Eastern, Phillips will install and maintain such compression equipment, it being understood that, in such case, Panhandle Eastern shall pay Phillips the cost of operating such compression equipment plus eight per cent (8%) per annum on the depreciated investment, payment to be made monthly with current payments for gas.

"It is understood that, due to shrinkage of gas in Phillips' gasoline plant resulting from extraction of hydrocarbons and due to the use of volumes of gas as fuel for the operation of said plant, the volumes of gas compressed in said compressors will be greater than the volumes of gas delivered by Phillips to Panhandle Eastern at the delivery point specified in Paragraph 3 (a) above; and, in order to reimburse Panhandle Eastern for the cost of compressing such additional volumes of gas, Panhandle Eastern shall be entitled to credit in the amount of three tenths of one cent (.3 of 1¢) per M. cu. ft. for all volumes of gas compressed in said compressors and not delivered at said delivery point. Phillips shall install and maintain the meter or meters necessary to measure the volumes of gas compressed in said compressors, and Panhandle Eastern shall have the same rights and privileges with respect to said measuring equipment and to the measurement of gas therethrough as are accorded it under the provisions of Paragraph 15 hereof with respect to the measuring equipment and the measurement of gas by Phillips at the point of delivery hereunder. Phillips shall furnish to Panhandle Eastern each calendar month a statement for all such credits in respect of gas compressed during [fol. 1523] the preceding calendar month. In the event Panhandle Eastern shall install and operate the compressors, the credit shall be allowed as a deduction on current statements by Phillips to Panhandle Eastern for gas delivered hereunder, and in the event Phillips shall install and operate the compressors, the credit shall be allowed on current statements by Phillips to

Panhandle Eastern for compression charges computed as provided in the next preceding paragraph hereof."

4. Paragraph 10 of the Original Contract as modified and amended by Article II of the Processing Contract, is hereby modified and amended to read as follows:

"10. All gas delivered by Phillips under the terms of this contract shall contain less than one (1) grain of hydrogen sulphide per one hundred (100) cu. ft. of gas and less than twenty (20) grains of total sulphur per one hundred (100) cu. ft. During the first five (5) years after the date of first delivery of gas hereunder, the heating valve of all gas delivered hereunder shall in no event, at the time and place of delivery, be less than nine hundred seventy (970) British thermal units per cu. ft., and thereafter, shall in no event, at the time and place of delivery, be less than nine hundred and sixty (960) British thermal units per cu. ft. In the event the heating value of such gas shall be less than nine hundred and seventy-five (975) British thermal units per cu. ft., the price of such gas, as hereinafter provided, shall be decreased to that proportionate part of such price that the British thermal unit content of such gas per cu. ft. bears to nine hundred and seventy-five (975). All gas delivered by Phillips from the dedicated acreage and all supplemental deliveries of gas delivered at the same delivery point, as provided in paragraph 8 (b) above, shall be dehydrated by Phillips to a point such that the water vapor content [fol. 1524] of such gas does not exceed saturation at a temperature of twenty degrees (20°) Fahrenheit and at a pressure of five hundred (500) pounds per square inch gauge."

It is agreed that, for the purpose of determining Panhandle Eastern's rights, obligations and limitations, in respect of development of its leases in Texas County, Oklahoma, and Sherman and Hansford Counties, Texas, under the provisions of Paragraph 12 of said Original Contract, it may be assumed that the drilling units established by Phillips in the development of the dedicated acreage contain approximately six hundred and forty (640) acres each; provided that such assumption shall be for said pur-

pose only and that neither such assumption nor the provisions hereof shall impose any limitations or obligations upon Phillips in respect of the size or shape of drilling units established by it in the development of the dedicated acreage.

Unless, on or before August 1, 1944, both parties hereto shall have procured all governmental authority necessary for the commencement of delivery of gas under said Original Contract as herein amended, and sufficient materials to commence construction at that time and assurance of materials necessary to complete the project, this letter of agreement shall be null and void and the Original Contract, Supplemental Contract and Processing Contract shall remain in force and effect without amendment as herein provided.

The terms and conditions hereof shall extend to and be binding upon the parties hereto and their respective successors and assigns.

If the foregoing correctly states your understanding of our agreement, please execute this letter of agreement as indicated below and return one executed copy to us for our files.

Very truly yours, Phillips Petroleum Company, by —— ——, Vice-President.

Attest: —— ——, Asst. Secretary.

Approved and Agreed to Panhandle Eastern Pipe Line Company, by —— ——, President.

Attest: —— ——, Secretary.

Approved as is from —— ——, Attorney.

5/15/44.

[fol. 1525] Phillips Petroleum Company

Bartlesville, Oklahoma

March 18, 1946.

Accounting for Gas Enrichment in Hansford Gas Deliveries to Panhandle Eastern Pipe Line Co.

File: 1-Ma-270-46

Mr. George T. Koch, Panhandle Eastern Pipe Line Company, 1221 Baltimore Avenue, Kansas City, Missouri

DEAR SIR:

Below I have set down the method to be followed in accounting and settling for the BTU enrichment which has been in effect at our Hansford Plant since January 6, 1946.

1. The bas- heating value for determining the amount of enrichment shall be 973 dry.

2. If and when Panhandle Eastern requests the extraction of any reduced vapor pressure gasoline from its gas at Sneed, Phillips may at its option, continue to extract a 26-70 product, but in such an event, it must return to the Hansford gas deliveries a number of therms theoretically equivalent to the liquids extracted from Panhandle Eastern's gas at Sneed between 26 pound and the reduced vapor pressure which Panhandle Eastern has nominated. Panhandle Eastern will bill Phillips and Phillips will pay *pay* for the 26 pound extraction at Sneed under the present procedure established by the Processing Contract.

3. Phillips will bill Panhandle Eastern for the BTU added above 973 dry at Hansford as follows:

From the numerically averaged BTU of each day's delivery as taken from the recording calorimeter will be subtracted the 973 BTU established above as the base heating value and that number of BTU multiplied by the total deliveries that day to Panhandle Eastern from Hansford (recorded volumes to be corrected to pressure base of 30″ hg) will establish the number of therms enrichment for that day. For the purposes of this agreement the numerically averaged BTU shall be taken as the nearest whole number. For example,

979.2 shall be taken as 979.0. A summation of similar enrichment data for the month will establish the total number of therms for which an accounting is due. The price per therm for such enrichment shall be sixty per-sent (60%) of the weighted average price Phillips pays Panhandle for its Sneed gasoline during the month.

[fol. 1526] 4. Regardless of the vapor pressure which Panhandle Eastern has nominated from Sneed, Panhandle Eastern can request and Phillips, if it has them available, will add heating value to the Hansford gas at anytime. The number of BTU's so added will be converted to therms and paid for under the same formula as outlined in 3 above.

5. Regardless of the price of 26-70 gasoline the payment for enrichment at Hansford shall never be less than 1.65 cents nor more than 2.75 cents per therm.

Term:

The above accounting procedure will be applicable to the Hansford gas enrichment from January 6, 1946 to February 27, 1946 and thereafter until either party elects to stop the procedure.

I believe the method and procedure as set forth above is exactly as we discussed it at our meeting on February 19, 1946. If you find this to be the case will you kindly so indicate by signing one copy of this letter and returning it to us for our files.

Very truly yours, W. F. Mathonly.

WFM:bar.

Accepted: ——.

O.K. George T. Koch.

[fol. 1527] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32,994

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff in Error,

vs.

PEERLESS OIL AND GAS COMPANY, a Corporation, et al., Defendants in Error

No. 33,006

PHILLIPS PETROLEUM COMPANY, a Corporation, Plaintiff in Error

vs.

STATE OF OKLAHOM, et al., Defendants in Error

Syllabus

1. The grant of power to the Corporation Commission under 52 O. S. 1941, § 239 to regulate the taking of natural gas from a common source of supply "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom," by necessary implication includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

[fol. 1528] 2. The provisions of 52 O. S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. A price fixing order of

the Corporation Commission made pursuant to statute is to be tested by the same standards.

4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power, to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

5. The Commerce clause of the Federal Constitution does not preclude the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed before the operation of interstate commerce occurs.

[fol. 1529] Appeal from Order of Corporation Commission of Oklahoma fixing a minimum price consideration in the taking of natural gas from the Guymon-Hugoton Field in Oklahoma, and from order for ratable taking of gas made in favor of the Peerless Oil and Gas Company. The Cities Service Gas Company appeals. The Phillips Petroleum Company appeals.

Affirmed:

Glenn W. Clark, R. E. Cullison, and Joe Rolston, Jr., Oklahoma City, Okla., for Cities Service Gas Co.

Don Emery, Rayburn L. Foster, R. B. F. Hummer, Harry D. Turner and R. M. Williams, for Phillips Petroleum Company.

Earl Pruet, Okla. City, for Peerless Oil and Gas Company and Texas County Land Royalty Owners Association.

Richardson, Shartel, Cochran & Pruet, of Counsel.

Mac Q. Williamson, Floyd Green, Earl Pruet, W. D. McBee, for Defendants in Error.

Floyd Green, John Blanton, Charles F. White, for State of Oklahoma.

T. Murray Robinson, Amicus Curiae.
Robinson, Shipp & Robertson, of Counsel.

[fol. 1530] OPINION—Filed January 17, 1950

WELCH:

Peerless Oil and Gas Company, owner of a gas well and certain oil and gas leases on lands located in the Guymon-Hugoton Gas Field in Texas County, filed with the Corporation Commission an application for an order requiring Cities Service Gas Company to connect its pipeline to the gas well and take and receive the natural flow of gas from the well ratably with its taking of gas from other wells of the field, and further that the Commission fix the price at which said gas should be taken and fix the price for all natural gas produced in the Guymon-Hugoton Gas Field in Oklahoma. Peerless alleged drainage by Cities Service and failure of agreement with Cities Service for the taking of gas from its well, and particularly a disagreement as to the price for the gas.

Cities Service filed answer admitting its ownership of a pipeline system and that it was taking gas from the field through its lines and stated an offer to take gas from the Peerless wells ratably with its taking of gas from other wells in the field and at the average price paid for gas in the field. Cities Service alleged a usage of its pipeline in the furtherance of a business of producing natural gas for transportation and sale in interstate Commerce and asserted that the Corporation Commission was without power or authority to regulate its facility and business, and, particularly, to order the price and terms for taking or purchasing gas in the field.

[fol. 1531] After hearing of the Peerless application had commenced the Corporation Commission permitted the State of Oklahoma, on relation of the Commissioners of the Land Office, to file petition in intervention. The Land Office alleged ownership in trust for the State of a large acreage of land in the gas field and surrounding areas. It asserted that monopolistic price and arbitrary measurements for gas prevailed in the field, and was resulting in dissipation and exhaustion of gas from the common source of supply at a fraction of its intrinsic value, and that such taking was resulting in wanton economic waste. The Land Office

prayed that the Corporation Commission fix a minimum price and a certain standard of measurement applicable to all gas in the field and to be applied upon its removal from the natural reservoir.

The Commission published notice of the time and place of a hearing to be held upon the Land Office petition, with invitation to all persons interested to appear and be heard. The notices were directed to certain named companies and to "all operators, purchasers, and takers of gas in Oklahoma, and particularly in the Guymon-Hugoton Field in Texas County, Oklahoma."

In the course of the proceeding a petition was filed requesting the Commission to fix a minimum price for gas in the field signed by several persons as royalty owners and under a designation as members of the Texas County Land and Royalty Owners' Association.

[fol. 1532] The Commission, after the series of hearings above mentioned, and after hearing testimony from witnesses presented by Peerless, the Land Office, Cities Service and the testimony of various other persons, entered a general order that on and after a certain future date, therein mentioned, "no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch." The Commission issued a further order to become effective on the same date directed to Cities Service ordering that Company to take gas from the Peerless wells ratably with its taking from other wells in the field and as ratable taking is prescribed in a certain former general order of the Commission, and that Cities Service pay the Peerless for the gas so taken not less than 7¢ per thousand cubic fect wellhead price measured at a pressure of 14.16 pounds pressure per square inch.

Subsequent to the effective date of these orders Phillips Petroleum Company filed an application to vacate or modify the price fixing provision of the orders. After a hearing wherein evidence was introduced, the Commission entered an order denying the application to vacate.

[fol. 1533] Cities Service appeals from the two price fixing orders. Phillips appeals from these orders and from the order denying its application to vacate.

During the pendency of the Peerless application Peerless and Cities Service entered into an agreement for a ratable taking of gas from the Peerless wells by Cities Service, leaving unsettled the price to be paid for the gas.

The primary question presented in these appeals arises from the order of the Commission fixing a minimum price on natural gas in the field.

Cities Service presents argument under the following statements:

"1. No constitutional or statutory power is granted Commission, either expressly or by necessary implication, to fix by general order the price or other terms for taking or purchasing natural gas in the field.

"2. 52 O. S. 1941, Section 233, purporting to authorize Commission in case of dispute to fix price and other terms for taking or purchasing natural gas as between individual parties, is unconstitutional because:

(a) It sets forth no policy or standard to guide Commission in acting thereunder (Articles IV and V, Oklahoma Constitution);

(b) It violates the equal protection clause of the Federal Constitution (Section 1, Article XIV, U. S. Constitution); and

[fol. 1534] (c) It violates the due process clauses of the Oklahoma and Federal Constitution (Section 7, Article II, and 14th Amendment; as well as Sections 2 and 23, Article II, Oklahoma Constitution, and Section 59, Article V, Oklahoma Constitution.)

"3. If this Court should hold Commission under existing law is either expressly or impliedly granted natural gas price-fixing powers under some conceivable circumstances, the same are unconstitutional as applied herein because:

(a) Price fixing has no reasonable relationship to waste, protection of correlative rights, or conservation of natural resources;

(b) It casts a burden on, impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution (Clause 3, Section 8, Article 1); and

(c) It denies Cities due process and the equal protection of the law (14th Amendment, Oklahoma Constitution).

"4. If this Court should hold Commission is under present laws granted constitutional or statutory price-fixing powers, then existing laws are not self-executing but require Commission, in advance of an attempt on its part to enforce the taking or purchasing of natural gas, to specify with clarity and particularity the elements constituting the basis of such taking or purchasing so as to enable the parties concerned to effectuate fully fully and fairly a completed contract.

[fol. 1535] "5. If this Court should hold Commission is granted under present laws constitutional and statutory price-fixing powers and existing laws are self-executing, then Commission in exercising its authority thereunder is confined to ascertaining and applying the going or market price and other non-discriminatory equitable terms for taking or purchasing natural gas prevailing in the field.

"6. The orders of the Commission are void because of vagueness, indefiniteness, and uncertainty.

"7. Commission erred in denying Cities' motions and demurrers; (a) Motion to allow inspection and copy of certain records and documents of Peerless material to judicial phase of case;

(b) Demurrer, motion to dismiss, and motion for judgment in judicial phase of the case;

(c) Combined demurrer, motion to dismiss, and motion for judgment in the legislative phase of the case;

(d) Motion to set aside findings of fact and conclusions of law in order entered by Commission in judicial phase of the case and substitute therefor certain findings of fact and conclusions of law submitted by Cities and for judgment;

(e) Motion for new trial in judicial phase of the case.

[fol. 1536] "8. The findings and orders of Commission are not supported by substantial, competent evidence and are contrary to the undisputed evidence.

"9. Commission failed to grant Cities a fair and impartial trial and hearing in accordance with the due process clauses of the Oklahoma and Federal Constitutions (Section 7, Article II, Bill of Rights, Oklahoma Constitution; Section 1, Article XIV, U. S. Constitution);

(a) By refusing to inform Cities in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

(b) By allowing the misjoinder of judicial and legislative matters;

(c) By allowing the misjoinder of judicial and legislative matters;

(d) By erroneously allowing Land Office to file petition in intervention and intervene in the case;

(e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

[fol. 1537] (h) By allowing Commissioner's conservation attorney to participate and take an active part in trial of private dispute between Peerless and Cities;

(i) By admitting incompetent and hearsay evidence and testimony;

(j) By refusing to segregate and separate the evidence of Peerless, Land Office and others at the close of their testimony so Cities could know what evidence pertained to the judicial phase of the case and what

evidence pertained to the legislative phase of the case;

(k) By Commission's refusing to recognize, apply and abide by its own substituting orders."

Since 1913, Laws 1913, ch. 198, Secs. 1, 2, 3, 52 O. S. 1941, Sections 231, 232, 233, the statutes of this state have provided that owners might take, from a common source, amounts of gas proportionate to the natural flow of their respective wells, but not more than 25% of that natural flow without consent of the Corporation Commission; that any person taking gas from a gas field, except for certain specified purposes, "shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission. * * *"

[fol. 1538] Obviously, the protection of the interest of all owners of the gas is the intent of the statute and such is the standard of guidance to the Corporation Commission acting thereunder.

Various types of state regulatory schemes providing for ratable taking and designed to protect the "coequal rights" of the several owners of common source of supply have been sustained. Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 S. Ct. 576; Bandini Petr. Co. v. Superior Ct., 284 U. S. 8, 76 L. ed. 136, 52 S. Ct. 103, 78 A. L. R. 826; Patterson v. Stanolind Oil & Gas Co., 182 Okla. 155, 77 P 2d 83; Patterson v. Stanolind Co., 303 U. S. 376, 83 L. ed. 231, 59 S. Ct. 259. In Republic Natural Gas Co. v. State et al., 198 Okla. 350, 180 P. 2d. 1009, an order of such an effect by the Corporation Commission was sustained.

In reference to provisions of Sec. 233, supra, and an order of the Corporation Commission made pursuant thereto requiring producer of gas to take ratably from well of another producer in the field, it was held that a foreign corporation obtaining permission to do business and produce natural gas in this state may not question constitutionality of the statute. The decision of this court affirming the Commission was appealed to the United States Supreme Court. Republic Natural Gas Co. v. State, et al., 334 U. S. 62, 92 L. ed. 1212. That court held, in an opinion by Justice Frank-

[fol. 1539] furter, that by reason of matters left open by the Commission's order, this court's judgment lacked the finality requisite to a review there. In the majority opinion reference is made to the order of the Commission as going no further than to require ratable taking of gas and the probability that the Commission will be later asked to determine specific terms of the taking, including the price to be paid for the gas. Reference is made to price fixing as being inherently provocative of constitutional claims and to the probability of additional federal question arising out of the controversy. Four members of the Court joined in dissent. In a dissenting opinion by Justice Rutledge containing a discussion of the case on the merits, it is said:

> "* * * In * * * a line of cases beginning a half century ago with Ohio Oil Co. v. Indiana, 177 US 190, 44 L. ed. 729, 20 S. Ct. 575, this Court has upheld various types of state regulatory schemes designed to prevent waste and to protect the "coequal rights" of the several owners of a common source of supply. Those cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights."

After stating a conclusion that a state may require ratable taking in the preservation of correlative rights in a common source of supply, it was further said:

> [fol. 1540] "The remaining narrow issue is whether the most practical method of achieving a fair accommodation of the correlative rights of the parties is invalid because Republic is required to take and to pay for gas that it does not want—at least does not want if it must pay for it."
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> * * * * * * *
>
> "The fact that Republic is compelled either to purchase Peerless' gas or to carry it to market and account for the profits does not make the regulation unreasonable. If that were the sole cause for complaint, the state could take the more drastic step of requiring all the well owners to shut down completely until all were able to produce on a ratable basis or came to come agreement effective to make this possible. It is clearly within the state's power to require Republic to com-

pensate Peerless for the gas drained from under the Peerless land. Patterson v. Stanolind Oil & Gas Co., 305 U. S. 376, 83 L. ed. 231, 59 S. Ct. 259. Here, instead of requiring Republic to make a cash payment based on the estimated amount of drainage, the commission has selected what is unquestionably a more accurate method of adjusting the correlative rights. Even if it could be assumed that this method imposed a somewhat heavier burden on Republic than possible alternatives, it does not follow that the method selected by the Commission is unconstitutional. For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solutions [fol. 1541] to the thorny problems that accompany regulation in this highly technical field. Railroad Commission v. Rowan & N. Oil Co., 310 U. S. 573, 84 L. ed. 1368, 60 S. Ct. 1021. Keeping in mind the fact that property law is peculiarly a matter of local concern, the special difficulty of defining and regulating property rights in natural gas, the respect due to experts in this field, and the rather unusual facts this record presents, I cannot say that the state is without power to enter this order.

"It is suggested that the order, since it includes the requirement of purchase and not merely of transportation and accounting for profits, becomes invalid because it shifts from Peerless to Republic the business risk incident to ownership and sale of the gas. Possibly this might furnish a more serious basis for objection in materially different circumstances. But, apart from what has already been said, in those now presented I conceive no substantially greater harm to be possible from the order's operation, than depriving Republic of the rights to drain gas from beneath Peerless' lease without liability to pay for the gas so drained.

"This assumes that if the parties should be unable to agree upon terms the Commission will fix them in a manner taking due account of prevailing market conditions relevant to the price to be paid, as well as reasonable compensation for the use of Republic's facilities. With those limitations properly applied, it is hard to see what great business risk will be shifted

to Republic. For, as we have already noted, the commodity is one not subject to storage, must be sold as soon as it is transported to the point of consumption, and therefore cannot be subject to possible wide fluctuation in selling price between the times of purchase and [fol. 1542] sale by Republic."

We think it clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under terms as the parties may agree upon; or in default of agreement, to take upon such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

The Commission's order, made under the provisions of Sec. 233, supra, directing the Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken at not less than 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

In 1915 provision was made for regulation of the extraction of natural gas, not only to prevent excessive drainage [fol. 1543] as between producers, but for the prevention of waste and for the protection of the interest of the public and the interest of all those having a right to take from a common reservoir.

It was provided, Laws 1915, ch. 197, § 4, 52 O. S. 1941, § 239, that when the full production from a common source of supply of natural gas is in excess of the market demands, a producer from such common source of supply may take therefrom only such proportion as may be marketed without waste, and in such proportion as the natural flow of the well or wells of such producer bears to the total natural flow of the field, having due regard

to the acreage drained by each well; provided that the Corporation Commission may permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The Statute provides that "the said commission is authorized and directed * * * to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one source of supply as against another."

The succeeding section 240 provided as follows:

> "Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gather- [fol. 1544] ing lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. (Laws 1915, ch. 197, Sec. 5.)"

Obviously the impelling reason for discrimination in the taking of gas from one source of supply as against another rests in economic consideration and it is obvious that a practical and ready means of preventing such discrimination appears with control of the price of gas at its original source, or at the "wellhead" in each of the particular [fol. 1545] fields. Reference to protection of the interest of all those having a right to produce gas from a common source of supply directs attention to the owners of the land overlying the gas and such interests as they have conveyed. Doubtless because of the technical and financial requirements in taking gas from its natural place, it has long been the general practice of landowners to lease the privilege of taking gas from under their lands and usually in consideration of a royalty of ⅛th or a particular part of the gas so taken or its equivalent marketed. Because of such technical and financial requirements in the development of a gas field, and necessary to the marketing and commercial use of gas, landowners are usually compelled to enter into such leasing arrangements as the only means of securing an exploration and development of their gas resources. In the nature of the product, landowners cannot accept delivery of gas so produced but must trust to producers for a proper handling of their share of the production. Such reserved or royalty interests are transferable and oft-imes are sold in whole or in part.

As suggested by Justice Rutledge in Republic Nat. Gas Co. v. State, supra:

> • • • Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for con- [fol. 1546] veyance to them from the well mouth. The competitive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monopoly once success has been achieved in a particular field.
>
> "These peculiar qualities, moreover, have been reflected in the legal rights relating to the ownership of gas in place, as well as its extraction. They have been

adapted to its nature and to that of the competitive struggle regarding it. Only a specialist in this branch of the law, which varies from state to state, can undertake to say with any reliable degree of precision what rights may be in particular situations. These difficulties, intensified by the competitive struggle for the product and the inadequacy of common law ideas to control it, have forced both the states and the federal government to adopt extensive regulatory measures in recent years. This has been necessary both to conserve the public interest in this rapidly depleting natural resource and to secure fair adjustment of private rights in the industry. Rather than being a sacred, untouchable enclave of the common law, the field by its very nature lends itself especially to governmental intervention for such purposes. * * *"

It is readily conceivable that in the course of development of a particular gas field, the ownership of producing and marketing facilities might become such, or be so combined, [fol. 1547] as to permit monopolistic practices. Under the circumstances prices for gas might be established having no relation to the market value of gas prevailing throughout the natural gas industry, and in other fields of commensurate development costs, and having no relation to the market value of other natural resources and products in competitive usage. On the other hand, a like result might obtain from economic warfare between competing producers and marketers. Under either of such circumstances prices might be so reduced that landowners or royalty holders or particular leaseholders would have their interests in the gas exhausted, dissipated and taken, without having received any reasonable compensation, and each suffer waste of a valuable reversion.

Likewise the taking of gas under such circumstances would be inimical to the public interest. Like other natural resource, the subject of private ownership and exploitation, natural gas is a taxable resource. The tax is applied to the gross production and finally measured by the market value or price of the thing produced or reduced to personal possession. The taking of gas from a field, when the taking price of the gas is substantially lower than the price prevailing in other gas fields having commensurate production costs, and at prices having no relation to the market

[fol. 1548] value of other of the natural resources of competitive usage, leads to an exhaustion of such gas without it having borne its fair share of taxation.

Natural gas being exhaustible and of various valuable usage, the public interest extends to its conservation. Undoubtedly the price at which gas may be obtained has an influence upon the ultimate purpose for which gas may be taken and used, and when the price for gas is substantially lower than its intrinsic value or lower than the market price of products of similar usage, a wasteful use of the gas is apt to occur.

The relationship of price to conservation is suggested in the following expression from the concluding paragraph of the opinion in Quinton Relief Oil & Gas Co. v. Corporation Commission, 101 Okla. 164, 224 Pac. 156:

> "* * * Natural gas has twice the heating units of artificial gas, and taking into consideration the convenience of natural gas, it is intrinsically worth more than artific-al gas; its market value being from $2 to $3 per 1,000 cubic feet. The amount of carbon black produced from 1,000 cubic feet of natural gas has a market value of about 10 cents. It, therefore, is obvious that the state, in the proper exercise of its police power and in conservation of so valuable a natural resource as natural gas, may prohibit the wasteful utilization of the same in the interest of the public welfare."

[fol. 1549] The impelling reason for or cause of discrimination in the taking of gas from one source of supply as against another, and the dilemma of the landowner growing out of private contract for the sale of gas without his interest being represented, is suggested in the following expression found in Oklahoma Natural Gas Corp. v. State, et al. 161 Okla. 104, 17 P. 2d 488:

> "It would be a very efficient scheme to circumvent the proration law for a purchaser of gas operating by pipeline, which it has to have in order to successfully handle gas, to take more gas in one place on a low cost than a rival operating on a higher purchase cost depending on contract, and by a system of reciprocity, allow its competitor in another pool to take more on the cheap rate. Thus it would be to the advantage of

> the friendly pipelines, and very much to the disadvantage of the unsuspecting landowner. Hence the necessity for putting somewhere the power to get a check upon this and as far as possible prevent it and equalize."

We are of the opinion that such considerations as above discussed occupied the legislative mind and motivated the enactment of the 1915 Act. In the 1915 Act the grant of power to the Corporation Commission to regulate the taking of natural gas from any source of supply, so as to protect the interest of all those having a right to produce therefrom, by necessary implication, includes the power to fix a minimum price on the gas as a condition of the taking, when found reasonably necessary to the accomplishment of that [fol. 1550] purpose. Likewise the grant of power to regulate, with directions that such power be exercised so as to prevent waste and protect the interest of the public, necessarily implies a power to fix prices as a condition of the taking of gas when otherwise, and because of prevailing prices, the public interest might suffer.

It is well settled that the state in exercise of its police power may regulate the taking of natural gas in the protection of the public interest and in preservation of private correlative rights. Quinton Relief Oil & Gas Co. v. Corp. Comm. supra; Patterson v. Stanolind Oil & Gas Co. 182 Okla. 155, 77 Pac. 2d 83 and Republic Natural Gas Co. v. State, supra.

Such policy of the law making body of the state is expressed in the 1915 act. In the nature of the subject matter the Legislature was compelled to leave to another agency of the state the duty of bringing about the result pointed out by the statute. As has been noted, under section 239, supra, the Commission is charged with the duty of regulating the taking of gas from a common source of supply. The standard to guide the Commission in acting thereunder is the prevention of waste, the protection of the interest of the public, and the protection of the interest of all those having a right to produce from such common source of supply. There is no invalid delegation of [fol. 1551] power by reason of uncertainty in the stated criterion and the act does not confer arbitrary and uncontrolled powers. The price fixing feature of the Commission's order is but a means of securing the purpose for

which the act was passed, or is the instrumentality employed by the Commission to carry out the legislative will and it is limited in its use to the effecting of the expressed purpose. The validity of the order rests in its reasonableness and relevancy to the policy the Legislature was free to adopt.

As was stated in Nebbie v. New York, 291 U. S. 502, 78 L. ed 940:

> "Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty."

See Herrin v. Arnold, 183 Okla. 392, 82 P. 2d 977.

The Commission had before it the sworn testimony of persons who stated they were engineers of long experience in the production and marketing of natural gas. These witnesses gave testimony to the effect that studies had been made of the character of the natural gas in the Guymon-Hugoton Field, and that studies had been made of the intrinsic value of natural gas or the value of gas as compared to the market value of other fuels in the relation to the heat units each would produce. With these factors considered, it was stated that the commercial heat value of [fol. 1552] the gas in the Guymon-Hugoton Field, tested with consideration to its delivery and sale at a certain central point of commercial usage, and with subtraction of nominal transportation costs to such central point of commercial usage, is in excess of 10¢ per 1000 cubic feet. It was stated that large blocks of acreage in the Guymon-Hugoton Field are under lease to a comparatively few companies who own the only pipe line outlets from the field, and that competition in the price of gas is not an element in the taking of gas in the field; that the gas is being taken from the field at prices at the wellhead ranging from 3.6¢ to 5¢ per 1000 cubic feet measured on a basis of 2 pounds pressure per square inch above atmospheric pressure; that gas is being taken from the field and sold away from the field under unit of measurement of less than 2 pounds above atmospheric pressure. Various opinions were expressed by these witnesses who related long records of experience in the gas industry. It was stated that taking of gas from the field at prices of 3.6¢ to 5¢ per 1000 cubic feet constituted

economic waste and that such prices were conductive of physical waste and that to prevent economic and physical waste the minimum price for gas in the field should be 10¢ per 1000 cubic feet.

An employee of the State School Land Commission gave testimony to the effect that the State owned 49,600 acres of land located in Texas County, 30,160 acres of which was under lease with 6,099.92 acres being held as producing [fol. 1553] leaseholds; that the Land Office was receiving royalty from such productions on the basis of 4¢ per 1000 cubic feet for gas at the wellhead, and in some instances on the basis of 5¢ at the wellhead and that one producer from a large acreage was offering to pay 3.34 cents.

The testimony abundantly supports a conclusion that the conditions under which gas is being taken from the field is injurious to the interest of the public at large, and inimical to the interest of a substantial group such as landowners and others and is resulting in economic waste and conductive to physical waste. The testimony demonstrates that the price fixed as a condition of the further taking of gas from the field is reasonable and not beyond the requirements of the situation sought to be corrected, and will not result in discrimination.

The Corporation Commission has heretofore exercised its power of fixing prices at which natural gas may be produced and taken. As early as 1920, after the prescribed notice and hearing, the Commission fixed the price of 9¢ per M. C. F. for gas in the Cushing field. And in 1944, acting specifically in view of the national emergency, the Commission after notice and hearing, authorized the taking of natural gas for the manufacture of carbon black, but fixed the price to be paid for the gas so produced and used. And it was specified that the continued effective- [fol. 1554] ness of the permit should depend on the maintaining of the fixed price.

In this connection we observe the following demonstrations of a well known rule of construction. In Foot v. Town of Watonga, 37 Okl. 43, 130 Pac. 597, (598) this court said:

> "The construction placed on statutes or constitutional provisions by officers in the discharge of their duties, either at or near the time of the enactment, which has been long acquiesced in, is a just medium for its judicial interpretation."

And in Newblock v. Bowles, 170 Okla. 487, 40 Pac. (2d) 1097, (1101) this court said:

> "In McCain v. State Election Board et al. 144 Okla. 85, 289 Pac. 759, 760, this court said: 'The construction which has been placed upon a statute by the officer or governmental department charged with the carrying out of the provisions of the law is to be accorded due consideration by the courts in construing the statute.' To the same effect is the holding of this court in Leininger et al. v. Ward-Beekman & Brooks, Inc., 139 Okla. 292, 282 Pac. 476; Glasco v. State Election Board et al., 121 Okla. 119, 248 Pac. 642; Foot et al. v. Town of Watonga, 37 Okla. 43, 130 Pac. 597."

And in Washington County v. State Tax Commission, 133 Pac. (2d) 564, (568) this court said:

> [fol. 1555] "It is a general rule that contemporaneous construction by the department of government specially delegated to carry out a provision of the Constitution raises a strong presumption that such construction, if uniform and long acquiesced in, rightly interprets the provision. • • • While such construction is not conclusive upon the courts, it is entitled to the most respectful consideration. Wells Fargo Co. v. Harrington, 54 Mont. 235, 169 Pac. 463, 466."

See also League v. Town of Taloga, 35 Okla. 277, 125 Pac. 702; Williams v. Continental Construction Company, 168 Okla. 510, 34 P. (2d) 254.

In Great Northern Life Insurance Company v. Read, 126 Fed. (2d) 44, in const-uing a statute of Oklahoma, the 10th Circuit Court of Appeals said:

> "It is clear, under the Oklahoma statutes, that the license of a foreign insurance company expires on the last day of February next after its issue. Art. XIX of the Oklahoma Constitution and the Oklahoma statutes, hereinabove referred to, permit the construction that the payment of the gross premiums tax on or before the expiration of the license year on the last day of February is exacted for the privilege of doing business in the state during that license year and as a con-

dition precedent to the issuance of a license for the [fol. 1556] ensuing year. Such has been the uniform and long-continued construction of the executive department charged with the administration of the statutes. The long-continued construction of a statute by a department of the government charged with its execution is entitled to great weight and should not be overturned without cogent reasons. The Legislature of Oklahoma has convened many times during this period of administrative construction without expressing its disapproval. That silence may be regarded as acquiescence in or approval of the administrative construction. Similar statutory provisions have been so construed."

Cities Service contends the order appealed from impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution. In Interstate Natural Gas Company v. Federal Power Commission, 67 S. Ct. 1482, 331 U. S. 682, 91 L. ed. 1742, is a case involving the jurisdiction of the Federal Power Commission, we not this expression:

"In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which the States are constitutionally competent to act. • • • "

"Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interest of conservation or of any other consideration of legitimate local concern."

[fol. 1557] Here the Corporation Commission has fixed a minimum price for gas in a natural common reservoir; such price to be applied at the wellhead as a condition of the taking. The regulation applies to the production of natural gas and though it results in an incidental effect upon the sale price for gas after the gas has been reduced to possession, the subsequent sale of the gas for delivery into another state

does not brand the Commission order as a regulation of interstate commerce occur. The regulation is imposed before any operations of interstate commerce occur. In Parker, Director of Agriculture et al. v. Brown, 317 U. S. 341, it is said:

> "* * * No case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce."

We do not perceive that the commerce clause of the Federal Constitution precludes the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom may have contracted or will contract for sale and delivery of his share of the production outside the state, or because a purchaser from such producer will sell and transport the gas in interstate commerce.

[fol. 1558] The general order of the Commission fixing the minimum price for gas taken from the field as a part of the order requiring Cities Service to take ratably from the Peerless wells and as applied to Cities Service has the effect of requiring Cities Service to take ratably from Peerless and pay for the gas so taken at a price equal to the minimum price it must obtain for gas from its own wells offered at the well. If it may be said that under the price fixing order, Cities Service with ownership of pipeline facilities, might take gas from its own wells and after payment of public charges and royalty claims on the gas on a basis of the minimum price fixed by the State, run the gas across the state line and there with profit make disposition of the gas at prices below the minimum fixed by the state, it does not follow that it has a right to use its pipeline facilities to gather gas from other wells on such basis, in otherwise disregard of price regulations, or that it may so use its wells as to effect a drainage from others without liability having relation to the price regulation.

Undisputedly, the production from the Cities Service wells was resulting in drainage of the area where the Peerless wells were located and Cities Service offered to take ratably from the Peerless wells with its taking from its own

wells. The effect was an offer to take the gas at the average price prevailing in the field, or on the terms of a "common purchasee" of gas in the field. Cities Service [fol. 1559] suffered no prejudice to its rights in the fact that the Commission saw fit to investigate field conditions after dispute has arisen growing out of drainage from Peerless wells, or in the fact that a fixed price for gas was established. The order prohibiting Cities Service from taking gas from its wells except that it take ratably from the Peerless wells, insofar as it fixes the price for the gas so taken, is the same as that required of any purchaser of gas from the field. There occurs no greater invasion of Cities Service rights than depriving it of the right to drain gas from beneath the Peerless lease without paying for it. The overall effect of the order is to furnish a practical alternative, consistent with production by both Cities Service and Peerless, to protect Peerless from drainage by Cities Service.

We find no basis in the due process and equal protection clauses of the Federal and State Constitution for condemning the orders in their application to Cities Service.

Cities Service complains of certain rulings in reference to certain pleadings filed and complains of the Commission's conduct and rulings in the course of the various hearings held leading up to the promulgation of the orders here under attack.

The orders are legislative in character and subject in a large measure to the rules and principles by which the validity of statutes are determined. In the hearings preceding [fol. 1560] the orders, and not for violations thereof, the rules and principles of procedure obtaining in the enactment of a statute more nearly apply than the strict rules applicable to law courts.

We have examined the record and find substantial evidence to support the Commission's findings and no error of law is committed.

Phillips Petroleum Company in application to the Commission to vacate the orders introduce testimony to the effect that it owns oil and gas leases on several thousands of acres of land in the Guymon-Hugoton Field, and several producing gas wells thereon, and was presently taking several millions cubic feet of gas daily from such wells; that Phillips sells no gas produced from said field in the State of Oklahoma, but gathers gas from its wells through its own gather-

ing system to a central point in the State of Texas where it processes the gas and extracts therefrom natural gasoline and other hydrocarbons and sells the residue gas; that it sells such residue gas to Panhandle Eastern Pipe Line Company at 4¢ per 1000 cubic feet; that it has agreed to sell and deliver to Panhandle Eastern all of the gas it produces from 175,000 acres under lease in Texas County, subject to its right to extract natural gasoline and other liquid hydrocarbons from said gas prior to the delivery of such gas to Panhandle Eastern at the said central point in Texas.

[fol. 1561] Phillips here adopts the brief of Cities Service and with enlargement of argument here presents similar contentions concerning the authority of the Commission to make the orders appealed from and the constitutionality of the orders appealed from.

Our discussion of the Cities Service appeal is here applicable. We find no basis in the due process and equal protection clause of the Federal and State Constitutions for condemning the orders appealed from in their application to Phillips.

The orders appealed from are affirmed.

Davison, C.J., Arnold, V.C.J., Corn, and Johnson, JJ: concur. Gibson, Luttrell, Halley and O'Neal, JJ: Dissent.

[fol. 1562] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Titles omitted]

DISSENTING OPINION—Filed January 17, 1950

HALLEY, J. (dissenting):

There are two conclusions in the majority opinion in which I cannot concur. I cannot agree that the Corporation Commission has been given authority by the legislature to make a general order fixing the price of gas for an entire gas field or common source of supply. I cannot agree that the Commission has the authority to require Cities Service to pay to Peerless a price for gas produced in the Guymon-Hugoton field, substantially above the current

market price prevailing in that field. It is admitted that [fol. 1563] if the general price-fixing order for the entire field is authorized, then the price ordered paid to Peerless would necessarily follow the general price for the entire field. However, it is my view that the general price-fixing order is not within the powers granted to the Corporation Commission, and that Cities Service should only be required to pay Peerless the current market price prevailing in that field.

The majority opinion does not claim that general price-fixing authority for a common source of supply has been expressly granted to the Commission. It does conclude that such authority is necessarily implied as a means of carrying out the express powers given the Commission to regulate the production of gas, the prevention of waste, the protection of co-equal rights, and the interests of the state and its citizens. These are all worthy objectives. The conservation of a great natural resource challenges the best efforts of all, but does not warrant the Corporation Commission in exercising powers not delegated to it by the Oklahoma Legislature.

The statutes granting authority to the Corporation Commission to regulate the production of gas are generally referred to as the Acts of 1913 and 1915. The applicable portion of the 1913 Act, Ch. 198, page 440, Sec. 3 (sec. 233, Title 52, O. S. 1941), is as follows:

> [fol. 1564] "Any person, firm, or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree, at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

In 1915 the following Act, being Ch. 197, Sec. 5 (Sec. 240, Title 52, O. S. 1941) was enacted:

> "Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling

natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation shall be unable [fol. 1565] to purchase, all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have the authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade."

Sec. 2, Ch. 197, Session Laws of 1915 (Sec. 237, Title 52, O. S. 1941) defines the term "waste" as follows:

> "That the term 'waste,' as used herein, in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable or producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn, and the wasteful utilization of such gas."

[fol. 1566] The foregoing definition of waste was enlarged by the legislature in 1933 and in 1935, and the term "wasteful utilization" was changed to "inefficient utilization".

It is a cardinal rule of statutory construction that the primary aim is to arrive at the intention of the legislature. This ancient rule was announced in U. S. v. Temple, 105 U. S. 97, 26 L. Ed. 967, in the following words:

> "Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction, for the purpose of either limiting or extending its operation. When the language is plain, we have no right to insert words or phrases so as to incorporate in the statute a new and distinct provision."

Again in Russett School District No. C-8 v. Askew, 193 Okla. 102, 141 P. 2d 575, this court stated in the body of the opinion:

> "As has often been said, the cardinal rule in such cases is to ascertain and give effect to the legislative intention. That intention is to be first sought in the language of the statute itself, and if it is there plainly expressed, it must be followed without further inquiry."

The majority opinion correctly states the rule of construction to the effect that where an officer or government [fol. 1567] agency charged with the duty of administering a law construes the law and such construction is acquiesced in for a long period of time, such construction should be given great weight by the courts when called upon to construe such law. However, I am unable to agree that the record before us discloses that the Corporation Commission, charged with the duty of administering the law relating to the production of gas, has construed the regulatory Acts as giving it the authority to fix the price of gas produced from a reservoir, except where seller and buyer fail to agree upon a price, or that such construction has been long acquiesced in.

During the more than thirty years that the Commission has been charged with the authority to regulate the production of gas, there is shown only a single instance where it fixed the price of gas for a field or common source of supply. In 1920 the Oklahoma Natural Gas Co. was taking gas from the Cushing Field in Creek County at 6¢ per MCF, and selling it to consumers. The producers were

threatening to disconnect their wells. They appealed to the Commission to fix a higher price. The Commission entered an order fixing the price for the entire Cushing field at 10¢ per MCF. This order was not appealed from, and it is not shown how long it was effective. There had evidently been a previous agreement as to price. It was [fol. 1568] not shown whether all, or what percent, of the producers joined in the application to the Commission.

In 1924 the Commission entered an order prohibiting the use of gas for the manufacture of carbon black. The order was appealed from to this court, which affirmed the order on the ground that the use complained of was a "wasteful utilization" of gas. The case is reported as Quinton Relief Oil & Gas Co. v. Commission, 101 Okla, 164, 224 P. 156. The court held that Ch. 197, Session Laws of 1915, conferring upon the Commission the power to make rules and regulations to prevent the "wasteful utilization" of natural gas, also gave that body the power to define what uses are within the scope of that term.

In 1937, in the Application of Jackson, 179 Okla. 577, 66 P. 2d 1101, this court upheld an order authorizing the use of gas for the manufacture of carbon black as not being a "wasteful utilization". Reference is made to the Quinton case above, where such use was held to be wasteful, and it is held that if the Commission could determine what is "wasteful utilization", it could also determine what use is not wasteful.

In 1944, the War Production Board requested the Commission to enter an order granting authority to use natural gas for the manufacture of carbon black in the Guymon-Hugoton field. The order was issued and the price to be paid fixed at 5¢ per MCF(being approximately the market price in the field. The order was not appealed from. [fol. 1569] It was an emergency war order.

The above record does not support the claim that the Corporation Commission has construed the statutes mentioned as giving it the power to fix the price of gas for an entire field. During the years these statutes have been in effect, most of the major gas fields of Oklahoma have been discovered and developed. I agree that "implied powers" flow from a grant of express powers, and that they are those powers necessary or incidental to the exercise of the express powers. The power to fix prices is a drastic one.

In H. F. Wilcox Oil & Gas Co. v. Walker, 169 Okla. 33, 32 P 2d 1044, this court announced the rule relative to implied powers as follows:

> "It is well established that the authority of the Commission is definitely limited to the power expressly or by necessary implication granted to it by the Constitution and the statutes."

That case involved the proration of oil, but the same principle is applicable to the authority of the Commission with respect to gas.

The majority opinion quotes extensively from the dissenting opinion by Justice Rutledge in the case of Republic Natural Gas Co. v. State, et al., 334 U. S. 62, 92 L. Ed. 1212. However reasonable and persuasive that dissenting opinion, [fol. 1570] concurred in by three other members of the court, may be, is not the law.

If it had been the intention of our legislature to grant to the Commission the power to fix the price of gas at the wellhead for an entire field, the addition or inclusion of a few simple words in the statutes granting regulatory authority to the Commission would have settled the matter beyond doubt. Why did the legislature expressly grant authority to fix the price of gas where seller and buyer fail to agree, and fail completely to grant such authority in the vastly wider and more important field of fixing the price over an entire field or common source of supply? It is incredible that the legislature would expressly grant such authority in a narrow field and leave it to be implied in a vastly wider and more important area. A gas field, or common source of supply, is the basic unit to which conservation orders are generally applicable. The order of the Commission, which is approved by the majority opinion, means that the Commission may fix the price of gas in every field in the state. The production of oil is under the jurisdiction of the Corporation under similar statutes authorizing the prevention of waste, the protection of coequal rights, and conservation, yet the Commission has never asserted that it had the power to fix the price of oil. It is true that oil may be stored and transported in various ways, while gas cannot be stored and must be transported by pipeline.

[fol. 1571] It is not my view that conditions do not exist or may not hereafter arise in the Guymon-Hugoton field which may justify drastic regulatory measures by the Commission. The producers who have no pipeline facilities are wholly dependent upon those who have such outlets. These facts have prompted the legislature to give the Commission express powers to prohibit discrimination and to protect the interests of all parties. The land owner is especially interested because he cannot receive, store or distribute his share of the gas produced from his land, but is dependent upon the limited number of purchasers in the field. It may be that the royalty owners are not receiving their proper share of the proceeds of gas produced and marketed from their land. If they are not receiving their just shares under the terms of their lease contracts, they should seek relief in the courts and not before the Corporation Commission. It may be that gas is selling at a price lower than its intrinsic value, but that does not justify the Commission in fixing the price until the legislature has given it such power by clear and unmistakable terms, or by necessary implication.

The evidence shows that no physical waste is being practiced in the Guymon-Hugoton field. The only venting of gas is in the drilling and completion of wells, which is expressly allowed by statute. There is no claim of wasteful utilization. The gas is being sold for fuel, light, or power—all useful purposes.

[fol. 1572] The evidence as to the effect of price fixing to prevent economic waste is too vague and nebulous to justify serious consideration. It is based largely upon the comparative values of competitive fuels, such as coal and oil, and if followed in the Guymon-Hugoton field, the price of gas there would be so high that producers could not possibly compete with gas produced from other fields in Oklahoma, or in other states; and if the order of the Corporation Commission is made effective, there might result a forced shutdown of the entire field, depriving the state and its interested citizens of their right to compete in the open market in disposing of their gas.

The price fixed by the Commission, where seller and buyer are unable to agree upon a price, should be the current market price prevaling in the field. Any other price would be unfair, discriminatory and inequitable.

If the legislature had intended to give the Corporation Commission authority to fix the price of natural gas in every gas field in the state, such authority would have been expressly given. Failure to express such intention is proof that no such intention existed. To read into the statutes such drastic power is nothing short of legislation by judicial construction, and for the foregoing reasons I respectfully dissent.

[fol. 1573] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Titles omitted]

DISSENTING OPINION—Filed March 21, 1950

GIBSON, J. (dissenting):

Apart from what has been stated in Justice Halley's dissenting opinion and from other considerations upon which error in the holding of the majority opinion might be grounded, I am of the opinion the following considerations clearly demonstrate that the statement in the opinion that the Corporation Commission has authority to fix the price at which natural gas may be produced and taken from the field is not only without authority in law but is judicial legislation and that too in the face of a legislative enactment to the contrary.

The private ownership of the gas is recognized and the right of sale as an incident of ownership obtains under and is protected by the Constitution until qualified under proper authority. The Corporation Commission is without power to invade the right of the owner to sell and of the purchaser to buy except to the extent the right so to do is granted by the Legislature under authority of the Constitution.

In 1913 (S. L. 1913, ch. 198, sec. 3), such right, subject to limitations, was granted as follows:

[fol. 1574] "Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed

upon between said owners, and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

This section has been carried forward in the 1921, 1931 and 1941 statutes, and now appears as Tit. 52 O. S. 1941, sec. 233.

The conclusion of the court that the Commission has plenary authority to fix the price of gas in the field is implied from the provisions of S. L. 1915, ch 197, section 4, which is as follows:

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation se- [fol. 1575] curing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discriminatory in favor of anyone such common source of supply as against another."

This section, together with other provisions of the 1915 Act, was also carried forward in the 1921, 1931 and 1941 statutes, and the same now appears as Tit. 52 O. S. 1941, sec. 239.

That under such circumstances the quoted statutes are in pari materia there can be no question. And such fact has been expressly declared by this court in Republic Natural Gas Co. v. State, 198 Okla. 350, 180 Pac. (2d) 1009 (app. dismissed 68 S. Ct. 972, 334 U. S. 62, 92 L. ed. 1212) Wherein there is said:

> "It is also significant that both the 1913 Act and the 1915 Act were brought forward in the 1921 Statutes, the 1931 Statutes, and the 1941 Statutes, so that it is apparent that the Legislature in adopting the 1941 Statutes did not consider the 1913 Law superseded by the 1915 law."

[fol. 1576] The established rule of construction in such situation is to treat the sections as parts of one law. The rule is thus stated in 59 C. J. 1043, sec. 620:

> "* * * It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another."

This rule has been repeatedly recognized and applied by this court. Ratliff v. Fleener, 43 Okla. 652, 143 Pac. 1051, *1052*; Jefferson v. Cook, 53 Okla. 272, 155 Pac. 852, *855*. We there expressly held the acts relating to the subject should be read together as constituting "one law".

The fundamental rule of construction is the determination of the intent of the Legislature that it embodied in the law. And the same is to be ascertained primarily from the language used in the statute and where the language of the statute is plain and unambiguous there is no occasion for construction. McCain v. State Election Board, 144 Okla. 85, 289 Pac. 759, *761*. (See also text and cases cited thereto in 59 C. J. 952, sec. 569). In such situation, where the meaning of the language is plain it *must* be given effect by the courts. Osage County Motor Co. v. Pappin, 139

Okla. 23, 281 Pac. 217; Pasley v. Union Nat. Bank of Bartlesville, 137 Okla. 171, 278 Pac. 621. (See further [fol. 1577] text and cases cited 59 C. J. p. 955). Another pertinent rule is where statutes are in pari materia they should so far as possible be construed as in harmony with each other. State et al v. State ex rel. Shull, State Bank Comm'r, 142 Okla. 293, 286 Pac. 891.

Now, consider the two sections of the one law in the light of these rules.

Section 233 deals specifically with the extent of the power to fix prices that may be exercised by the Commission. This power is not plenary and the very idea that it may be so considered is expressly negatived by the requirement of conditions to the exercise thereof. Section 239 does not even purport to deal with the definition of Commission's power. But even if it can be construed as involving the exercise of price fixing power it can be none other than that which is provided for in section 233, to be exercised under the conditions therein prescribed. To hold otherwise is not only to fail to harmonize the two provisions but is to ignore a legislative intent which is expressly declared. Upon what theory can you apply a legislative intent that is different from and contrary to that which is expressly and plainly declared in the law being construed?

[fol. 1577a] I consider the effect of the holding of the majority to be even more serious than a distortion of the legislative intent, because to the extent it recognizes in the Commission a power in excess of the limitation imposed by the Legislature it involves an impairment of property rights.

If the better enforcement of the law requires that the Corporation Commission be clothed with more power than that expressly granted in the law, such fact is a challenge to further legislative action to be taken with due regard to constitutional limitations. Such need can afford no justification for this court to invest the Commission with the power by judicial fiat.

[fol. 1578] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32,994
(Consolidated)
No. 33,006

[Titles omitted]

PETITION OF PHILIPS PETROLEUM COMPANY FOR REHEARING —Filed February 20, 1950

[fol. 1579] (Proof of service omitted)

[fol. 1580] Comes now Phillips Petroleum Company, defendant and cross-petitioner in error in the above captioned case No. 32,994, and plaintiff in error in the above captioned case No. 33,006, said cases having previously been consolidated by order of this Court, and complains and seeks a rehearing of the decision of the Court entered herein January 17, 1950, wherein and whereby the Court affirmed orders numbered 19514 and 19515 of the Corporation Commission of Oklahoma fixing the minimum price at which gas can be produced in the Guymon-Hugoton Field in Texas [fol. 1581] County, Oklahoma, and further affirmed Order No. 19702 of said Commission denying this petitioner's application to vacate the orders first named.

Petitioner states as its grounds of complaint and as reasons for such rehearing the following, all of which are more fully emphasized and discussed in the brief hereto attached and made a part hereof:

1. The 1915 gas conservation law (Chapter 197, Session Laws 1915—Sections 236-247, Title 52, O.S. 1941) relied on by the Court as authority for the general field order was repealed prior to the institution of the proceeding and the making of said order herein by Chapter 3, Title 52, Session Laws 1945 (Sections 84-90, Title 52, O.S. Supp. 1945).

2. Assuming the 1915 act (Chapter 197, Session Laws 1915—Sections 236-247, Title 52, O.S. 1941) has not been repealed, it does not grant to the Corporation Commission valid authority, express or implied, to make the orders complained of; the act was not so intended; in respect to the orders complained of it lacks sufficient standards to constitute a lawful delegation of legislative authority; the

orders have no reasonable relation to the object of the act; and the Court overlooked a number of controlling decisions cited in petitioner's principal and reply briefs in these respects, including among others Sterling Refining Company v. Walker, 165 Okl. 45, 25 P. 2d 312; and Nowata Gas Company v. Henry Oil Company (8 C. C. A.) 269 F. 742, both involving orders of the Oklahoma Corporation Commission.

[fol. 1582] 3. The 1945 act (Chapter 3, Title 52, Session Laws 1945—Sections 84-90, Title 52, O.S. Supp. 1945) which repealed the 1915 act, supra, is more limited than the 1915 act, does not contain the language relied on by the Court as authority for the orders, and does not otherwise grant the Commission valid authority, express or implied, to make the orders complained of; the act was not so intended; in respect to the orders complained of it lacks sufficient standards to constitute a lawful delegation of legislative authority; and the orders have no reasonable relationship to the object of the act.

4. The Court in its decision wholly overlooked a question decisive of the case and duly submitted by this petitioner in its briefs, namely, that the orders appealed from as applied to Phillips and others similarly situated contravene the due process clause of the Fourteenth Amendment to the Constitution of the United States and Section 7 of Article II of the Constitution of the State of Oklahoma because of being vague, indefinite and uncertain.

5. The Court in its decision wholly overlooked a question decisive of the case and duly submitted by this petitioner in its briefs, namely, that the orders appealed from as applied to Phillips and others similarly situated contravene the due process clause of the Fourteenth Amendment to the Con-
[fol. 1583] stitution of the United States and Section 7 of Article II of the Constitution of the State of Oklahoma because of being arbitrary, unreasonable and confiscatory and have no reasonable relationship to the object of their enactment and go beyond the reasonable demands of the occasion.

6. The Court in its decision wholly overlooked a question decisive of the case and duly submitted by this petitioner in its briefs, namely, that the orders appealed from contravene the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution

of the United States and Section 7 of Article II and Section 59 of Article V of the Constitution of the State of Oklahoma in that the orders apply only to one of numerous common sources of supply in the state and to the producers in such common source of supply without any adequate or justifiable reason for singling out of the one common source of supply for purposes of special legislative action.

7. If either the 1915 act (Chapter 197, Session Laws 1915—Sections 236-247, Title 52, O.S. 1941) or the 1945 act (Chapter 3, Title 52, Session Laws 1945—Sections 84-90, Title 52, O.S. Supp. 1945), or any other act, is construed by the Court as authorizing the orders complained of, such acts to that extent contravene the due process and [fol. 1584] equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States and Section 7 of Article II and Section 59 of Article V of the Constitution of the State of Oklahoma for the same reasons that the orders held to be so authorized thereby contravene said con-titutional limitations as stated in Paragraphs 4, 5 and 6, supra.

8. The Court, in holding that the evidence before the Commission supported the conclusion that the orders were sustained by the evidence and bore a reasonable relationship to the object of the act under which it was found they were authorized, misinterprets the object of such act and fails to properly analyze, weigh and consider the evidence in relation thereto.

Wherefore, premises considered, this petitioner, Phillips Petroleum Company, prays that it be granted a petition for rehearing herein and that upon the hearing thereof this Court withdraw its prior decision and enter a decision vacating the orders appealed from.

Because of the importance of the decision in these cases both to this petitioner and to all concerned and because of its importance as a precedent in other cases, petitioner [fols. 1585-1673] further prays that this petition for rehearing and the Court's further consideration thereof be set for oral argument.

Respectfully submitted, Don Emery, Rayburn L. Foster, Harry D. Turner, R. M. Williams, All of Bartlesville, Oklahoma; Kenneth Heady, First National Building, Oklahoma City, Oklahoma, Attorneys for Phillips Petroleum Company.

[fol. 1674] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed February 18, 1950

Comes now Cities Service Gas Company, plaintiff in error, hereinafter called Cities, and respectfully represents to the Court that on Tuesday, January 17, 1950, a decree, judgment, decision and opinion, as the case may be, was entered and rendered by a majority of this Court in the above captioned case, affirming, sustaining and upholding as valid and constitutional two separate gas price-fixing orders of the Corporation Commission of Oklahoma, hereinafter called Commission, entered simultaneously and purporting to be limited and pertaining solely to the Guymon-Hugoton Gas Field in Texas County, Oklahoma. Cities further represents:

1. That this Court in deciding this case has failed to interpret the meaning and extent of each of said orders as applied to the operations of Cities and other purchasers and [fol. 1675] producers of gas in said Guymon-Hugoton Gas Field under the undisputed and indisputable facts in the record; that as a result the orders of Commission under this Court's opinion and decision are subject to many varying and contradictory interpretations, some of which are:

(a) That Order No. 19514 under the opinion and decision of this Court as rendered herein is subject to the interpretation that no natural gas shall be produced in the Guymon-Hugoton Gas Field by a producer unless such producer receives for the gas he may sell within the State of Oklahoma, whether the sale of such gas be made for delivery at the wellhead, at the pipe line of purchaser or elsewhere within the state, a price at the wellhead of not less than 7 cents per MCF measured at a pressure of 14.65 lb. absolute pressure per square inch, and that producers who were and are producing and gathering for sale under subsisting gas purchase contracts, at the pipe line of Cities or other purchasers of gas in the field, must either be paid for such gas a price at the wellhead of not less than 7 cents per MCF and upon the pressure base fixed by Commission's order or Commission can shut in said producers' wells and thereby

interrupt and stop the flow of gas under said subsisting gas purchase contracts.

That said opinion and decision of this Court is subject to the further interpretation that said order means that if a producer of gas in said field does not elect to sell his produced gas in Oklahoma he may, if he pays the production [fol. 1676] tax and his royalty owners on the basis fixed by the Commission's said order, transport such gas so produced outside the state and there sell or dispose of it at such price as such producer may determine, without further obligation under Commission's said order.

On the other hand, said opinion and decision is subject to the interpretation that said order means that even if a producer does not sell his gas in Oklahoma but transports such gas so produced outside the state and there under subsisting contracts or new contracts sells or disposes of it, such producer must realize and receive from such sale or disposal at the wellhead of the produced gas a price of not less than 7 cents per MCF measured upon the pressure base fixed by Commission's said order.

Said opinion and decision is also subject to the interpretation that Order No. 19514 is only applicable to sales of gas made by a producer to a purchaser at the wellhead in said field and that it does not apply to the sales of gas where producer produces and gathers the gas and, after such production and gathering, sells and delivers such gas to the purchaser at the pipe line of purchaser in said field or elsewhere within the State of Oklahoma outside said field.

[fol. 1677] (b) That order No. 19515 under the opinion and decision of this Court requires Cities to take and purchase natural gas ratably from the designated wells of Peerless Oil and Gas Company, hereinafter called "Peerless", in said field but only for so long a time as it, Peerless, determines, and to pay Peerless therefor a price of not less than 7 cents per MCF for natural gas at the wellhead, measured at a pressure of 14.65 lb. absolute pressure per square inch; that at any time Peerless decides to dispose of its said gas elsewhere or to devote it to another use, it is at liberty to disconnect its said wells from Cities' pipe line system, stop the flow of gas therefrom and thereby impede and impair the service and operation of Cities' gas transportation system, Cities being required to take and purchase but Peerless not being required to deliver and sell, resulting in a

unilateral and unjust arrangement lacking mutuality of obligation and therefore illegal.

That Sec. 3, c. 198, Laws of 1913, being 52 O.S. 1941, Sec. 233, means, either when considered alone or with other statutes, that where a purchaser and a producer of gas in said Guymon-Hugoton Field or elsewhere within the State of Oklahoma have entered into a contract for the taking and purchasing of gas in said field upon such terms, including price, as the parties have theretofore agreed upon [fol. 1678] and the gas under said contract is being taken ratably, Commission has no jurisdiction or authority over either the parties or the subject matter nor the right to change or modify the terms of said contract, including the price of gas agreed upon by the parties therein.

That said Order No. 19515 under the opinion and decision of this Court is subject to the further interpretation that said order requires Cities to take gas ratably from Peerless' wells in accordance with the formula for ratable taking prescribed in Order No. 17867 of Commission, paragraph 9 of said order providing, among other things, that all purchasers of gas in the field shall comply with the common purchaser and ratable taking provisions of the Oklahoma Statutes by the equitable purchasing and taking of all gas without discrimination in favor of one producer as against another whether in price or amount; that Cities, prior to the issuance and effective date of said Order No. 19515, having entered into subsisting gas purchase contracts with producers in said field as authorized by 52 O. S. 1941, Sec. 233, upon terms, at a price, and upon a pressure base different from those fixed by Commission in its order, said Order No. 19515 requires Cities to discriminate in taking and purchasing the Peerless gas in favor of Peerless and against other producers from whom it purchases in violation of subsisting Order No. 17867 and the common purchaser statutes of Oklahoma and is therefore invalid. In this connection it is noted that Commission in its findings purporting to support said order found that Cities was a common purchaser of gas in Oklahoma. [fol. 1679] It must be conceded that the common purchaser acts of Oklahoma do not in themselves fix a price for the purchase of natural gas but only require a purchaser not to discriminate in favor of or against those from whom it purchases. If it is determined that Cities is a common purchaser of gas and Commission decides it is necessary to

fix a price different from that which such common purchaser is paying under subsisting nondiscriminating contracts, then Commission is required in advance of an attempt to exercise such authority, if it possesses that authority, to promulgate a general order applicable to all purchasers of gas in the field setting forth with clarity and particularity the basic elements governing the purchase of such gas, as the common purchaser acts with respect to a change or increase in the price of gas currently being paid are not self-executing; Moore v. Vincent, 174 Okla. 339, 50 P. 2d 388; Wilcox Oil & Gas Co. v. State, 162 Okla. 89, 19 P. 2d 347; Madox et al. v. Hunt et al., 183 Okla. 465, 83 P. 2d 553; Sec. 59 Art. V, Oklahoma Constitution. Commission in this case has promulgated no such general order. The only order Commision has promulgated with respect to increasing the price of purchased gas in said field over and above the amount currently being paid under subsisting non-discriminatory gas purchase contracts is No. [fol. 1680] 19515 which is a special order directed solely against Cities. Order No. 19514 is directed solely against producers as evidenced by plain and unambiguous language therein, notwithstanding that the application of Peerless itself expressly requested Commission to "fix the price to be paid by all purchasers of natural gas in the Hugoton Oklahoma gas field," and we quote the exact language of counsel for Peerless, who said, "If the Commission please, if we hadn't asked that the price of gas in the field be fixed in this way, then we would have to tender the gas at what they say was the going price in the field, in which event we could never have gotten a price established in the field." (R. 108)

[fol. 1681] That by reason of the foregoing, said orders of Commission under the decision and opinion of this Court, as written, are so vague, indefinite and uncertain, so intermingle findings of fact and law, and are subject to so many varying and contradictory interpretations that a producer or purchaser from a producer cannot in advance of production or purchase with clarity and particularity determine his rights, duties and obligations under said orders; that men of common and equal intelligence must and would therefore necessarily guess at the meaning thereof and differ as to the effect and application of said orders under the factual situations reflected by the record under peril of dire penalties for an error in so guessing including, with-

out limitation, contempt; that such a situation as this violates the first essential of due process; Connally v. Gen. Constr. Co., 269 U. S. 385, 46 S. Ct. 126, 70 L. Ed. 322-328; Asso. Industries v. Industrial Welfare Comm., 185 Okl. 177, 90 P. 2d 899.

2. That the Court has overlooked, in deciding in this case that Commission Order No. 19515 is legislative in character and in upholding and sustaining same as valid and constitutional, the decision of the Supreme Court of the United States in the case of Prentis v. Atlantic Coastline Co., 211 U. S. 210, 29 S. Ct. 67, 53 L. ed. 150, wherein that Court defined a judicial inquiry and a legislative inquiry and clearly pointed out the difference between the two inquiries and wherein that eminent jurist Justice Holmes said:

> "A Judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand looks [fol. 1682] looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power."

This Court has further overlooked its own unreversed decisions wherein it has fully recognized the distinction between a judicial and legislative inquiry and accepted the definition of each as laid down by the Supreme Court of the United States in Prentis v. Atlantic Coastline Co., supra; see A. T. & S. F. Ry. Co. v. State, 23 Okl. 510, 101 P. 262; Asso. Industries v. Industrial Welfare Comm., 185 Okl. 177, 90 P. 2d 899; Skelly Oil Co. v. Corp. Comm., 183 Okl. 364, 82 P. 2d 1009; H. F. Wilcox Oil & Gas Co. v. State, 162 Okl. 89, 19 P. 2d 347; Russell v. Walker, et al., 160 Okl. 145, 15 P. 2d 114; In Re County Commissioners, 22 Okl. 435, 98 P. 557. In connection with the foregoing it is the specific contention of Cities that the definition and distinction between judicial and legislative inquiries as laid down by the Supreme Court of the United States in Prentis v. Atlantic Coastline Co., supra, with other cases of like import supporting same, are binding and conclusive on this Court in determining whether Cities has been accorded and given a fair and impartial trial or adversary

hearing in accordance with the due process clause of the 14th Amendment to the United States Constitution.

3. That in upholding, affirming and sustaining the validity and constitutionality of Commission's judicial Order No. 19515 and the statutes cited by this Court in support thereof, the Court has overlooked the provisions of Revised Maximum Price Regulation No. 436 (Cities' Ex. 80) promulgated under authority of Emergency Maximum Price Control Act of 1942, as amended, 50 U.S.C.A. 901, et seq., which act and regulation were in full force and effect [fol. 1683] at the time Peerless tendered gas from its said well or wells to Cities, as alleged and set forth in its said application, and at the time Commission commenced its hearing thereon, and in connection therewith the Court has further overlooked that at the time of such tender of gas by Peerless to Cities and at the time of the trial and hearing on said application before Commission there was in full force and effect Commission's subsisting Order No. 17867 (so recognized by Commission in its order) which provided in paragraph 4(b) thereof that before any unconnected well shall be granted an allowable (Peerless' wells were unconnected at the time of tender) so that said well could lawfully be produced, the operator shall tender its gas production to a purchaser at the going price in the field (Application of Moran, — Okl. —, 200 P. 2d 758) and that the going price as determined by the Office of Price Administration under said subsisting regulation and price control act, as well as the actual going price in the field, was not in excess of 4 cents per MCF for dry wellhead gas to pipe lines in the Hugoton Field, Texas County, Oklahoma, and that said order of Commission requiring a tender of gas by producer to the pipe line before the well is entitled to an allowable and to produce has been during all times material herein and is now in full force and effect.

4. That the Court has overlooked in deciding this case Sec. 59, Art. V, Oklahoma Constitution, which provides that where a general law can be made applicable no special law shall be enacted, and has further overlooked that the orders of Commission have the same force and effect as though prescribed in terms by statute and are laws within the meaning of said Constitutional provision; A.T. & S.F. [fol. 1684] R. Co. v. Scarlett, 300 U. S. 371, 81 L. ed. 748; Arizona Gro. Co. v. A.T. & S.F.R. Co., 284 U. S. 370, 76

L. ed. 348; has further overlooked that there is absolutely nothing in the record in this case, or of which this Court takes judicial notice, which affords any adequate or justifiable reason why a statewide order of Commission could not be made applicable generally, and particularly to the measurement of gas, if Commission possessed any such powers, and has further overlooked that as between the persons and places included within the operation of Order No. 19514, and those omitted, there is not any distinctive characteristic evidenced by the record in this case, or of which this Court takes judicial notice, upon which a different treatment may be reasonably founded or that furnishes a practical and real basis for discriminating in favor of or against, as the case may be, the Guymon-Hugoton Gas Field and the landowners, royalty owners, producers and purchasers therein, or for or against, as the case may be, other gas fields within the State of Oklahoma and the landowners, royalty owners, producers and purchasers in said fields; Williams v. Hutchens, 187 Okl. 268, 102 P. 2d 841, and other cases of like import.

5. That the Court has overlooked in deciding this case that Commission in limiting its said gas price-fixing and gas measurement Order No. 19514 solely to the Guymon-Hugoton Gas Field and increasing the price twofold and changing the measurement base therein has discriminated for or against, as the case may be, one common source of supply of natural gas as against another in violation of 52 O.S. 1941, Sec. 239.

[fol. 1685] 6. That the Court has further overlooked in deciding this case that the language of the gas statutes mentioned, referred to and set forth in its said opinion upholding Order No. 19514 of Commission is not ambiguous and uncertain in meaning but is plain and concise and that by reason thereof under the well recognized rules of statutory construction there is no necessity or occasion for interpretation and this Court has no legal or constitutional authority to interpolate into the statutes language, matters and things not placed therein by the Legislature of Oklahoma; that said statutes deal with the production and conservation of gas, as gas, as a commodity and not to the price or proceeds thereof; that price is not even mentioned in any of the statutes relied upon by the Court in upholding Order No. 19514 and that under previous unreversed deci-

sions of this Court neither this Court nor Commission can legally by judicial legislation read into a statute that which the Legislature has specifically omitted; Sterling Rfg. Co. v. Walker, 165 Okl. 45, 25 P. 2d 312; Pannell v. Farmers Union Coop. Gin Assn., 192 Okl. 652, 138 P. 2d 817; Wilcox Oil & Gas Co. v. Walker, 169 Okl. 33, 32 P. 2d 1044; Chicago R.I. & P. Ry. Co. v. State, 158 Okl. 57, 12 P. 2d 494; Y & Y Cab Service v. Okla. City, 157 Okl. 134, 28 P. 2d 551; Worley v. French, 184 Okl. 116, 85 P. 2d 296; Appl. Central Airlines, Inc., 199 Okl. 300, 185 P. 2d 919; also, Interstate Commerce Comm. v. Cinn. N.O. & T.P.R. Co., 167 U. S. 478, 17 S. Ct. 896-898, 42 L. ed. 243; Sunshine Dairy v. Peterson, 193 P. 2d 543, and cases cited therein, together with other cases and decisions previously cited to the Court in briefs heretofore filed by Cities.

7. That the Court has overlooked in deciding this case [fol. 1686] that in appeals involving an asserted violation of any right of the parties under the Constitution of the United States or State of Oklahoma, Sec. 20, Art. IX, Constitution of Oklahoma, as amended, requires this Court to exercise its own judgment as to both the law and facts and that in its opinion and decision this Court has not done so but has simply stated that it has examined the record and finds substantial evidence to support the Commission's findings and orders.

8. The Court has overlooked in deciding this case that the [fol. 1687] testimony of experts and others in the record and referred to by the Court in its opinion and decision to the effect that "taking gas from the field at prices of 3.6 cents to 5 cents per MCF constituted economic waste and that such prices were conducive of physical waste and that to prevent economic and physical waste the minimum price for gas in the field should be 10 cents per MCF," and upon which in a large measure this Court bases its decision, is incompetent, irrelevant, immaterial and prejudicial to Cities and was objected and excepted to as such at the time it was received by Commission. That the Court has further overlooked in deciding this case that the undisputed and indisputable competent evidence in the record shows that no waste of gas as defined and contemplated by the Oklahoma Statutes was being committed, occurring

or imminent in said field; that correlative rights of producers, landowners and royalty owners in or to gas, as gas, were and are being protected and conservation of natural gas was and is being had in said field in accordance with existing Oklahoma Statutes and subsisting orders of the Corporation Commission. That the Court has further overlooked in deciding this case that economic waste is not included within the definition of waste as set forth in any of the gas statutes of the State of Oklahoma; that even if the testimony relied upon and referred to by the Court in its opinion to the effect "that to prevent economic and physical waste the minimum price for gas in the field should be 10 cents per MCF" is competent, the order of Commission fixes a price of 7 cents and therefore if this Court is going to accept such evidence as the basis for its decision in upholding the orders to prevent waste of gas, the [fol. 1688] only logical conclusion is that Commission by fixing the price at 7 cents in the face of this testimony instead of preventing waste is permitting waste to occur and it necessarily follows that by accepting the testimony the orders as enter-d fixing a price of less than ten cents have no relation to prevention of waste of gas as defined and contemplated by the Oklahoma Statutes. That the decree, judgment, decision and opinion of this Court, as well as the orders of said Commission, are contrary to the undisputed and indisputable evidence in the record which clearly reflects that the only real purpose of Commission's gas price-fixing orders was to increase the price of natural gas in order to confer special eco-mic advantages on royalty owners and certain producers in said field and increase without legislative authority the gross production tax on gas in said field, to the great financial detriment of Cities, other gas pipe line companies operating in said field, and the gas consuming public in Oklahoma and elsewhere, and not for the purpose of preventing waste as contemplated by statute, protecting correlative rights as contemplated by statute, or protecting the public interest as contemplated by statute; that the end result is, under the undisputed and indisputable evidence in the record, a denial to Cities and other producers and purchasers of gas in the field of the equal protection of the law, due process of law, and the impairment of valid and subsisting gas purchase contracts and leases, all because the

Commission thought the price of gas in said field was too cheap. In this connection attention is directed to the following cases:

[fol. 1689] In Reagan v. Farmers Loan & Trust Co., 154 U. S. 362, 38 L. ed. 1014, it is said, on page 1024, Law Edition:

> "The equal protection of the laws, which by the Fourteenth Amendment no state can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for the benefit of another, or of the public. This, as has been observed, is a government of law and not a government of men and it must never be forgotten that under such a government, with its constitutional limitations and guarantees, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held."

See, also, Hairston v. Danville & W. R. Co., 52 L. ed. 637; Chicago St. P. M. & O. R. Co. v. Holmberg, 282 U. S. 162, 75 L. ed. 27; Nashville C. & St. L. R. Co. v. Walters, 294 U. S. 405, 79 L. ed. 949; Penn. Coal Co. v. Mahon, 260 U. S. 393, 67 L. ed. 322, Thompson v. Cons. Gas Util. Corp., 300 U. S. 55, 81 L. ed. 510; Treigle v. Acme Homestead Assn., 297 U. S. 189, 80 L. ed. 575, and other cases cited in Cities's briefs heretofore filed in this case.

[fol. 1690] 9. That the Court has overlooked in deciding this case that the public interest and convenience does not justify taking one person's property and giving it to another without payment of compensation therefor or without due reciprocity of advantage; Panhandle Eastern Pipe Line Co. v. State Highway Comm., 294 U. S. 613, 79 L. ed. 1090.

10. That the Court has overlooked in deciding this case that if legislative Order No. 19514, is, as indicated by the Court in its opinion and as evidenced by order itself, directed solely against the producer for the purpose of preventing waste as defined and contemplated by the Oklahoma Statutes, there is no legal or justifiable reason why a pur-

chaser of gas in the field should pay such producer double the going price in the field so as to prevent such producer from wasting said gas.

11. That the Court has overlooked in deciding this case that the minimum price fixed by Commission orders for the taking and purchasing of natural gas in said Guymon-Hugoton Gas Field does not conform to the formula prescribed by the Gross Production Tax Act, which this Court has determined in its opinion is measured by the market value or price of the thing produced or reduced to personal possession; that market value or price and a minimum price fixed by Commission are not synonymous. If it is the de- [fol. 1691] termination of this Court, as reflected in its opinion, that the tax applied to the gross production of gas in the Guymon-Hugoton Field is to be measured by the minimum price and on the measurement base fixed by Commission orders, then the rule for determining the gross production tax on gas would not be uniform throughout the state and would result in tax discrimination in violation of Sec. 5 Art. IX, Constitution of Oklahoma, which provides, "taxes shall be uniform upon the same class of subjects." In this connection the attention of this Court is directed to the fact that the Oklahoma Tax Commission has by its recently issued orders, acting through its Director of the Gross Production Division, notified Cities, in writing, and other producers and purchasers in said Guymon-Hugoton Gas Field, of its proposal to assess gross production taxes based on the price and measurement base [fol. 1692] fixed by Commission's legislative Order No. 19514, and that proceedings for such assessment are currently pending before the Tax Commission. That this Court will take judicial notice of such orders and proceedings, without doubt, upon the same basis as it has the order of Commission issued in 1920 with respect to the Cushing Field, which order, as this Court is fully aware, was not introduced in evidence in this case and does not appear in the record in this case.

12. That this Court has overlooked in deciding this case that an order of Commission cannot legally and constitutionally be applied retroactively or retrospectively so as to destroy or impair existing vested rights or defenses; that when Commission entertained the application of Peer-

less to settle a dispute between Peerless and Cities, as provided by 52 O. S. 1941, Sec. 233, and held a hearing thereon under said statute and existing facts, including current regulations covering tender of gas, it was conducting a judicial inquiry (Prentis v. Atlantic Coastline Co., supra; In Re County Commissioners, supra) and could not lawfully, after institution of the proceedings and the hearing thereon, promulgate a legislative order having the force of law and apply it retroactively or retrospectively in settling a dispute arising under a statute already in existence and based upon past facts; Miller v. U. S., 294 U. S. 435, 79 L. ed. 997, where it is said, on page 981:

> "An administrative regulation is subject to the rule equally with a statute; and accordingly, the regulation here involved must be taken to operate prospectively only."

[fol. 1693] In this connection it should be specifically noted that according to the application of Peerless itself the only issue in dispute between Cities and Peerless was price, and Peerless has also so conceded in its brief.

13. That the Statutes of Oklahoma mentioned, referred to, and set forth in said decree, judgment decision and opinion of this Court, as interpreted and applied therein by the Court, as well as orders of Commission, under the undisputed and indisputable evidence and facts in the record, are repugnant to, violate and contravene the due process and equal protection clauses of and the 14th Amendment to the Constitution of the United States, the commerce clause, Sec. 8, Art. I, United States Constitution, and the contract clause, Sec. 10, Art. I, United States Constitution.

14. The Court has overlooked in deciding this case Sec. 52, Art. V, Oklahoma Constitution, providing that after suit has been commenced on any cause of action the Legislature shall have no power to take away such cause of action or destroy any defense to such suit; Maynard v. Central Nat'l Bank of Okmulgee, 185 Okl. 272, 91 P. 2d 653; that this provision is applicable to Commission's orders having the force and effect of law and that judicial Order No. 19515 as entered by Commission and upheld and affirmed by this Court in this case takes away from Cities, among other

defenses, that of unlawful tender; Application of Moran, supra.

15. That the Court has overlooked in deciding this case that the statutes relied upon by it in affirming and upholding Commission's Order No. 19514 create new rights and duties unknown to the common law and provide specific [fol. 1694] remedies for violation thereof; that such remedies alone apply and do not include price fixing, and such remedies as provided are exclusive; Barnett v. Muncie Nat'l Bank, 98 U. S. 555, 25 L. ed. 212.

16. That the Court has overlooked and disregarded in deciding this case that Chapter 3, Session Laws of Oklahoma 1945, in effect at time of entry of Commission orders, particularly Sections 3 and 4 of said Act, did by implication as adjudged and decided by existing unreversed decisions of this Court repeal Chapter 197, Laws of 1915, particularly Sections 2 and 4 thereof, upon which Commission orders are based, in that the 1945 Act covers the whole subject of the 1915 Act and embraces new provisions plainly showing that it was intended by the Legislature as a substitute for the 1915 Act and particularly Sections 2 and 4 of said 1915 Act; Appl. Jackson, et al., 179 Okla. 577, 66 P. 2d 1101, and cases therein cited.

Wherefore, Cities Service Gas Company, plaintiff in error, prays that this Honorable Court re-examine its decree, judgment, decision and opinion herein and (a) grant a rehearing of this cause; (b) interpret and clarify the meaning, application and effect of said Commission orders and redetermine the validity thereof, in the light of the authorities cited herein, as the same apply to Cities Service Gas Company under the facts as disclosed by the record in this case; and (c) allow oral argument on this Petition for Rehearing.

[fols. 1695-1696] (Signed) Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Attorneys for Cities Service Gas Company, Plaintiff in Error. First National Building, Oklahoma City, Oklahoma.

(Affidavit of service omitted in printing.)

[fol. 1697] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER DENYING PETITIONS FOR REHEARING—March 21, 1950

The Clerk is hereby directed to enter the following orders:

32994—Cities Service Gas Company, a Corporation v. Peerless Oil and Gas Company, a Corporation, et al.

33006—Phillips Petroleum Company, a Corporation v. State of Oklahoma, et al.

Petitions for rehearing and oral argument in the above consolidated causes denied.

Denver N. Davison, Chief Justice.

[fol. 1698] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32,994

(Consolidated)

No. 33,006

[Titles omitted]

ORDER STAYING MANDATE—Filed March 24, 1950

For good cause shown, the mandate in the above captioned and consolidated cases be and the same is hereby stayed for fifteen (15) days from and after March 24, 1950, to allow Phillips Petroleum Company, defendant and cross-petitioner in error in case No. 32,994, and plaintiff in error in case No. 33,006, time within which to file petition for appeal to the Supreme Court of the United States and to take such other steps as are incident to the perfection of such appeal.

Done this 24th day of March, 1950.

Denver N. Davison, Chief Justice.

[fol. 1699] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

No. 32994. No. 33006

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA TO THE SUPREME COURT OF THE UNITED STATES—Filed April 7, 1950

To the Honorable Chief Justice of the Supreme Court of the State of Oklahoma:

Comes now the petitioner, Phillips Petroleum Company, a corporation, appellant in the above entitled case, by its attorneys, and respectfully shows:

1. The Supreme Court of the State of Oklahoma, the highest court of said state, on January 17, 1950 in the consolidated cases of Cities Service Gas Company v. Peerless Oil [fol. 1700] and Gas Company, et al., No. 32,994, and Phillips Petroleum Company v. State of Oklahoma, et al., No. 33,006, then pending on the docket of said court, rendered a judgment against this petitioner (a) affirming a certain order of the Corporation Commission of the State of Oklahoma rendered on the 9th day of December, 1946, designated as Order No. 19514 in Cause CD No. 1054, by which order said Corporation Commission of Oklahoma prohibited the taking of natural gas out of the producing structures or formations of the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch, and (b) affirming a certain order of said Corporation Commission rendered on the 4th day of February, 1947, designated as Order No. 19702 in said Cause CD No. 1054, by which order the said Corporation Commission of Oklahoma denied the application of petitioner to vacate or clarify said Order No. 19514.

2. Petitioner was and is a producer of natural gas in said Guymon-Hugoton Field in Texas County, Oklahoma, and is a defendant and cross-petitioner in error in said case No. 32,994, being an appeal by Cities Service Gas Company and

petitioner from said Order No. 19514, and is plaintiff in error in said case No. 33,006, being an appeal by petitioner from both said Order No. 19514 and said Order No. 19702. The [fol. 1701] appellees above named are all the parties, other than appellant, appearing in person or by counsel in said consolidated cases in the Supreme Court of Oklahoma and who have an interest in this appeal.

3. On the 20th day of February, 1950, being within the time allowed by order of the Supreme Court of the State of Oklahoma within which to file its petition for rehearing, petitioner filed its petition for rehearing with said court, which said petition was denied by order of said court dated March 21, 1950, by reason whereof said Order No. 19514 of the Corporation Commission of Oklahoma and said judgment of the Supreme Court of Oklahoma will become final as to petitioner unless petitioner is allowed an appeal to the Supreme Court of the United States.

4. In the record and proceedings and in the rendition of said judgment there was drawn in question by petitioner the validity of both said Order No. 19514 of the Corporation Commission of Oklahoma and Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, Oklahoma Statutes 1941, the statute under which the Supreme Court of Oklahoma held said order was authorized, on the ground that said order and said statute, and each of them, are in contravention of, and repugnant to, the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that they deprive petitioner of its liberty and property without due process of law and deny to petitioner the equal protection of the [fol. 1702] laws, and the decision and judgment of said court was in favor of the validity of said order and said statute.

5. If said judgment is permitted to become final, manifest error will occur greatly to petitioner's damage. The facts in such regard as disclosed by the record are as follows. The petitioner is a producer that does not sell and has no market for its gas at the wellhead but otherwise gathers and processes the same and elsewhere sells or usefully disposes of the by-products thereof. As applied to petitioner, the order is vague, indefinite and uncertain in that it fails to provide, first, whether petitioner is permitted

to so gather and process its own gas and elsewhere dispose of the by-products or whether it must sell the same in its natural state to others at the wellhead in order to get the prescribed "price at the wellhead" or, second, if such taking and utilization by petitioner of its own gas is permitted and it gets no wellhead price for the gas, how petitioner can determine from day to day whether or not it is in compliance with the order. Thus to continue its present methods of operation petitioner will be subject to severe penalties for violating the order without any standard or guide whereby it can determine in advance whether or not it is in violation thereof. To avoid the violation of the order petitioner will be compelled either to shut in its gas wells and thereby suffer irreparable loss or if it is able to find some other use or market for its gas that will constitute [fol. 1703] a compliance with the order, it will be unreasonably and arbitrarily required to abandon its present facilities and make large expenditures to obtain such new market or make such other disposition of its gas. Petitioner does not know where or how it can obtain a new market for its gas or can make any other or different use or disposition thereof that will be in compliance with said order. The order unreasonably discriminates between producers who have a market and make wellhead sales of their gas and petitioner which has no such market, and unreasonably discriminates between producers in the Guymon-Hugoton Gas Field and producers of gas in other fields in the state. Feeling aggrieved, petitioner desires to appeal to the Supreme Court of the United States.

6. The errors upon which petitioner claims to be entitled to an appeal are more fully stated and set out in its Assignment of errors and Statement of Jurisdiction filed herewith.

7. Because of the facts and for the reasons set out in Paragraph 5 above, petitioner desires and is entitled to have the aforesaid judgment suspended and stayed until the final determination of its appeal to the Supreme Court of the United States upon the giving by petitioner of a good and sufficient supersedeas bond for that purpose as by law provided.

[fol. 1704] Wherefore, petitioner prays for allowance of appeal from the Supreme Court of Oklahoma, the highest court of said state, to the Supreme Court of the United States in order that the decision of the said Supreme Court

of the State of Oklahoma may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in said consolidated cases numbered 32,994 and 33,006, duly authenticated by the Clerk of the Supreme Court of the State of Oklahoma, may be sent to the Supreme Court of the United States as provided by law. Petitioner further prays that an order be entered suspending and staying the judgment of the Supreme Court of Oklahoma from which said appeal is taken upon the giving by petitioner of a good and sufficient supersedeas bond in the amount to be fixed and to be approved by the justice of the court granting the order allowing such appeal.

Dated this 7th day of April, 1950.

Don Emery, Rayburn L. Foster, Harry D. Turner, R. M. Williams, Attorneys for Petitioner, Phillips Petroleum Company.

[fol. 1705] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

No. 32,994 & No. 33,006

[Titles omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed April 7, 1950

Appellant, Phillips Petroleum Company, a corporation, complains of the judgment rendered by the Supreme Court of Oklahoma on January 17, 1950, in the consolidated cases of Cities Service Gas Company v. Peerless Oil and Gas Company, et al., No. 32,994, and Phillips Petroleum Company v. State of Oklahoma, et al., No. 33,006, then pending on the docket of said court, and assigns as grounds for reversal the following errors in the record, proceedings and judgment in said consolidated cases.

[fol. 1706] ASSIGNMENT OF ERRORS

1. The Supreme Court of Oklahoma erred in failing to hold that Order No. 19514 of the Corporation Commission of Oklahoma appealed from in said consolidated cases and affirmed by the judgment therein, as applied to appellant, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, that does not sell its gas at the wellhead

but gathers, processes and elsewhere sells or usefully utilizes the same, deprives appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because of being vague, indefinite and uncertain in that it wholly fails to provide, first, whether such a producer is permitted under the order to so gather, process and elsewhere than at the wellhead sell or otherwise utilize its own gas or whether it must sell the same in its natural state to others "at the wellhead" in order to get the prescribed "price at the wellhead", or second, if such taking and utilization by appellant of its own gas is permitted and it gets no "wellhead price" for the gas, how appellant can from day to day determine whether or not it is in compliance with the order, a violation of which is by law made the subject of severe penalties.

2. The Supreme Court of Oklahoma erred in failing to hold that Order No. 19514 of the Corporation Commission [fol. 1707] of Oklahoma appealed from in said consolidated cases and affirmed by the judgment therein, as applied to appellant, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, that does not sell its gas at the wellhead but gathers, processes and elsewhere sells or usefully utilizes the same, deprives appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because it is arbitrary, unjust and unreasonable, confiscates appellant's property, has no reasonable relationship to the objects of its enactment and goes beyond the reasonable demands of the occasion in that as disclosed by the record and proceedings in said consolidated cases (a) appellant does not now get nor does it have any reasonable means under the order of getting the prescribed "wellhead price" for its gas; (b) that to comply with the order appellant has no alternative other than to shut in its gas wells to its great detriment and irreparable damage; (c) that if the order denies to appellant the right to take and use its own gas or if it requires appellant to sell the same to others at the wellhead in order to get the prescribed price, it is for that reason alone arbitrary and capricious; (d) The order discriminates between producers having a wellhead market for their gas at the prescribed price and the appellant which does not have such a market or means

[fol. 1708] of getting such a price; (e) no waste or threatened waste of natural gas is prevented thereby; (f) no interests of the public are protected thereby; (g) no interests of those having a right to produce from the common source of supply are protected thereby; (h) the order does not prevent unreasonable discrimination between separate common sources of supply of gas but on the other hand results in such discrimination; (i) the purported objects to be accomplished by such order could more readily and more reasonably have been accomplished and dealt with in a direct and more effective way; and (j) enforcement of the order against appellant will be confiscatory of its property, having a value of many millions of dollars.

3. The Supreme Court of Oklahoma erred in failing to hold that Order No. 19514 of the Corporation Commission of Oklahoma appealed from in said consolidated cases and affirmed by said judgment therein, as applied to appellant, denies to appellant the equal protection of the laws in violation of Section 1, of the Fourteenth Amendment to the Constitution of the United States because the order applies only to the producers of gas in one of numerous common sources of supply of gas in the State of Oklahoma, there being no reasonable basis or justifiable reason for such classification and for so discriminating against producers in the one common source of supply of gas.

[fol. 1709] 4. The Supreme Court of Oklahoma erred in failing to hold that Order No. 19514 of the Corporation Commission of Oklahoma appealed from in said consolidated cases and affirmed by said judgment therein, as applied to appellant, denies to appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because it unreasonably discriminates between producers of gas in the Guymon-Hugoton Field who have a market for or otherwise sell their gas in such a manner as to get therefor the prescribed "price at the wellhead" and producers who otherwise take and utilize their own gas, there being no reasonable basis or justifiable reason for such classification and for so discriminating between producers in the same common source of supply of gas.

5. The Supreme Court of Oklahoma erred in failing to hold that Chapter 197 of the Oklahoma Session Laws of

1915, being Sections 236 to 247, Title 52 O.S. 1941, to the extent that said law was held to authorize Order No. 19514 of the Corporation Commission of Oklahoma, deprives appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the same reasons that said Order No. 19514, held to be authorized thereby, violates said constitutional limitations as stated in Assignment of Error 1 above set out.

[fol. 1710] 6. The Supreme Court of Oklahoma erred in failing to hold that Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52 O.S. 1941, to the extent that said law was held to authorize Order No. 19514 of the Corporation Commission of Oklahoma, deprives appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the same reasons that said Order No. 19514, held to be authorized thereby, violates said constitutional limitations as stated in Assignment of Error 2 above set out.

7. The Supreme Court of Oklahoma erred in failing to hold that Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, O.S. 1941, to the extent that said law was held to authorize Order No. 19514 of the Corporation Commission of Oklahoma, denies to appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the same reasons that said Order No. 19514, held to be authorized thereby, violates said constitutional limitations as stated in Assignment of Error 3 above set out.

8. The Supreme Court of Oklahoma erred in failing to hold that Chapter 197 of the Oklahoma Session Laws of 1915, being sections 236 to 247, Title 52 O.S. 1941, to the extent that said law was held to authorize Order No. 19514 of the Corporation Commission of Oklahoma, denies to appellant the equal protection of the laws in violation [fols. 1711-1742] of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the same reasons that said Order No. 19514, held to be authorized thereby, violates said constitutional limitations as stated in Assignment of Error 4 above set out.

PRAYER FOR REVERSAL

For which said errors the said Phillips Petroleum Company, appellant herein, prays that said decision and judgment of the Supreme Court of Oklahoma dated January 17, 1950, be reversed and that a judgment be entered holding invalid and vacating said Order No. 19514 of the Corporation Commission of the State of Oklahoma as applied to appellant and awarding to appellant its costs.

Dated this 7th day of April, 1950.

Don Emery, Reyburn L. Foster, Harry D. Turner, R. M. Williams, Attorneys for Appellant, Phillips Petroleum Company.

[fol. 1743] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

No. 32,994 & No. 33,006

[Title- omitted]

ORDER ALLOWING APPEAL—Filed April 7, 1950

The appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Oklahoma on January 17, 1950 in the consolidated cases of Cities Service Gas Company v. Peerless Oil and Gas Company, et al., No. [fol. 1744] 32,994, and Phillips Petroleum Company v. State of Oklahoma, et al., No. 33,006, then pending on the docket of said court, and having presented and filed its petition for appeal, assignment of errors, statement of jurisdiction and prayer for reversal of said judgment, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is therefore ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma in the above entitled cause, as prayed in said petition and as provided by law, and that the Clerk of the Supreme Court of Oklahoma shall prepare and certify a transcript of the

record, proceedings, opinion and judgment in said cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that the supersedeas and cost bond on appeal be fixed in the sum of Four Hundred Thousand Dollars ($400,000.00) and that upon the giving by appellant of such a bond with sufficient surety and conditioned as required by law and the rules of the Supreme Court of the United States, the judgment appealed from and all further proceedings in the Supreme Court of Oklahoma, insofar as applicable to appellant, shall be suspended and stayed until the final determination of said appeal by the Supreme Court of the United States.

[fol. 1745] The appellant now presenting a good and sufficient supersedeas and cost bond in the amount and conditioned as aforesaid with the United States Fidelity & Guaranty Company as surety, it is further ordered that said bond be and the same is hereby approved and that the aforesaid judgment and all further proceedings in the Supreme Court of Oklahoma, insofar as applicable to appellant, be and the same are hereby suspended and stayed until the final determination of said appeal to the Supreme Court of the United States.

Dated this 7th day of April, 1950.

Denver N. Davison, Chief Justice of the Supreme Court of the State of Oklahoma. (Seal.)

Attest: Andy Payne, Clerk of Supreme Court of Oklahoma, By W. F. Lemons, Asst. Clerk.

[fols. 1746-1763] Note: Supersedeas and cost bonds in the respective appeals of Phillips Petroleum Company and Cities Service Gas Company in the aggregate amount of $1,400,000 given and approved and are omitted in printing. Citations and proof of service of all papers on appeal and notice of paragraph 3, Rule 12 of the Rules of the Supreme Court with acknowledgment of service in the appeals of Phillips Petroleum Company and Cities Service Gas Company also omitted in printing.

[fol. 1764] IN SUPREME COURT OF OKLAHOMA

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA TO THE SUPREME COURT OF THE UNITED STATES AND ASSIGNMENT OF ERRORS—May 19, 1950

To the Honorable Denver Davison, Chief Justice of the Supreme Court of the State of Oklahoma or an Honorable Justice of the Supreme Court of the United States to Whom this Petition may Be Presented:

Comes now Cities Service Gas Company, a corporation, plaintiff in error in the above entitled cause, and hereinafter called "Appellant," by its respective attorneys signatory hereto and respectfully shows that:

1. On the 17th day of January, 1950, in the above entitled cause the Supreme Court of the State of Oklahoma, the highest court of said state in which a decision in said cause could be had, rendered a certain decree, judgment, decision and opinion, as the case may be, hereinafter called "decision" against and adverse to said Appellant and in favor of the above named defendants in error in the above entitled cause, hereinafter called "Appellees," affirming and upholding as valid two certain separate gas price-fixing orders of the Corporation Commission of the State of Oklahoma, entered and rendered simultaneously in the same proceeding, Cause C. C. 1054, on the 9th day of December, 1946, both effective January 1, 1947. Said Court also upheld as valid certain statutes of the State of Oklahoma upon which said Court decided said gas price-fixing orders were authorized and based, against the specific contentions of Appellant that said orders and said statutes as applied to the operations of Appellant under the undisputed and indisputable evidence and facts in the record [fol. 1765] were repugnant to, violated, and contravened the Constitution of the United States. One order, numbered in said cause 19,514, is legislative in character (Prentis V. Atlantic Coast Line Company, 211 U. S. 210, 29 Supreme Court 67, 53 L. Ed. 150), and in legal effect a statute (Hamilton v. Regents of University of California, 293 U. S. 235, 55 Supreme Court 197, 79 L. Ed. 343), made as decided by said Court under authority of 52 O.S. 1941, 239; is directed against all producers of natural gas in the Guymon-Hugoton Field in Texas County, Oklahoma, and in substance and

effect directs that no natural gas shall be taken out of the producing structures or formations in said field at a price at the wellhead of less than 7¢ per MCF of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch. The other order, numbered in said cause 19,515, is judicial in character (Prentis v. Atlantic Coast Line Company, supra) made as decided by said Court under authority of 52 O.S. 1941, 233, to settle a claimed dispute between Appellant and Appellee Peerless Oil and Gas Company and in substance and effect directs said Appellant to take by purchase natural gas from two wells of said Appellee in said Guymon-Hugoton Field and to pay Appellee for such gas so taken by purchase not less than 7¢ per MCF of natural gas at the wellhead measured at a pressure of 14.65 pounds absolute pressure per square inch. Said order also incorporates verbatim therein the provisions of Legislative Order no. 19514.

2. On the 18th day of February, 1950, and within the time prescribed by Order of the Supreme Court of the State of Oklahoma, Appellant duly filed with the Supreme Court of the State of Oklahoma its Petition for Rehearing in said cause, which petitioner was denied by order of said [fol. 1766] Court entered and effective March 21, 1950, and said decision became operative and final on said date.

3. In the record and proceedings and in the rendition of said decision there was drawn in question by Appellant herein the validity of each of said price-fixing orders of the Corporation Commission of the State of Oklahoma and the respective statutes cited aforesaid upon which said Court decided said orders were authorized and based, on the ground that said orders and each of them as well as the respective statutes upon which said orders were based as applied to the operations of Appellant under the undisputed and indisputable evidence in the record were repugnant to, violated, and were in contravention to various specified provisions of the Constitution of the United States specifically referred to in the next succeeding paragraph hereof and designated in the Assignment of Errors hereinafter set forth. The decision of said Court was in favor of the validity of each of said price-fixing orders and the respective state statutes upon which each of said orders was based as applied to the operations of Appellant.

4. In said proceedings there was drawn in question the construction and application of several clauses of the United States Constitution, namely:

(a) The clause of Section 1 of the 14th Amendment which prohibits the State of Oklahoma from depriving Appellant herein of its property without the due process of law and from denying to Appellant the equal protection of the laws.

(b) The clause of Section 8, Article 1, which prohibits the State of Oklahoma from casting an undue burden upon, impeding and impairing or discriminating against interstate commerce.

[fol. 1767] The decision of the Supreme Court of Oklahoma was in favor of the validity of each of said gas price-fixing orders of the Corporation Commission of Oklahoma and the respective state statutes of Oklahoma citied aforesaid upon which the same were based as applied to the operations of Appellant and against the rights, titles, privileges and immunities specifically set up and claimed by Appellant herein under each of said clauses of the Constitution of the United States, all of which is fully apparent in the record and proceedings of the case and in the rendition of said decision and is specifically set forth in the Assignment of Errors, namely:

Assignment of Errors

I

The Supreme Court of the State of Oklahoma erred in deciding that Order 19,514 and the statutes 52 O.S. 1941, 239, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the indisputed and indisputable evidence in the record, did not deprive Appellant of its property without the process of law or duty to it the equal protection of the laws in contravention to the provision of Section 1 of the 14th Amendment to the United States Constitution, because:

(a) Said order 19,514 as written, carrying severe penalties for violation thereof, is so vague, indefinite and uncertain, so intermingles findings of fact and law and is subject to so many varying and contradictory interpretations that a producer or a purchaser from a

producer cannot in advance of production or purchase [fol. 1768] with clarity and particularity determine his rights, duties and obligations thereunder and producers and purchasers must necessarily guess at the meaning thereof and differ as to its application and effect.

(b) Said order 19514 and the findings in support thereof are contrary to the undisputed and indisputable evidence in the record in that the record shows no waste of gas as defined or contemplated by the Oklahoma statutes was being committed or imminent in said gas field; that correlative rights of producers, landowners and royalty owners in or to gas, as such, were and are being protected and conservation of natural gas was and is being had in said field in accordance with existing Oklahoma statutes and subsisting orders of said Commission, and by reason thereof said order and the findings in support thereof are arbitrary, discriminatory, and demonstrably irrelevant to any pertinent policy the Oklahoma Legislature is free to adopt. In connection therewith said Court should have ordered sustained Appellant's combined demurrer, motion to dismiss, and motion for judgment, on the grounds therein stated.

(c) The record discloses no facts which present a sound or substantial basis for limiting the application of said order 19514 increasing the price of gas twofold to one gas field to the exclusion of other Oklahoma gas fields, thereby resulting in discrimination and denial of the equal protection of the law.

(d) Said order 19514 and said statute 52 O.S. 1941, 239, as applied by said Court take Appellant's property [fol. 1769] without compensation and give it to another without any justifying public purpose or due reciprocity or advantage therefor.

(e) Said statute 52 O.S. 1941, 239, is not ambiguous and no justifiable reason exists authorizing said Court by implication of law or judicial fiat to arbitrarily interpolate into said statute gas price-fixing powers not placed therein by the State Legislature.

(f) Said statute 52 O.S. 1941, 239, sets forth no standard or policy to guide said Commission in exercis-

ing any claimed price-fixing powers thereunder and, in the absence thereof, reposes in said Commission an absolute, unregulated, unbridled, undefined and arbitrary discretion with respect thereto.

II

The Supreme Court of the State of Oklahoma erred in deciding that Order 19515 and the statute 52 O.S. 1941, 233, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not deprive Appellant of its property without due process of law or deny to it the equal protection of the laws in contravention to the provisions of Section 1 of the 14th Amendment to the United States Constitution, because:

(a) Said order 19515 as written, carrying severe penalties for violation thereof, is so vague, indefinite and uncertain, so intermingles findings of fact and law and is subject to so many varying and contradictory interpretations that a producer or a purchaser from [fol. 1770] a producer cannot in advance of production or purchase with clarity and particularity determine his rights, duties and obligations thereunder and purchasers and producers must necessarily guess at the meaning thereof and differ as to its application and effect.

(b) Said order 19515 and the findings in support thereof are contrary to the undisputed and indisputable evidence in the record and in connection therewith the Court should have ordered sustained Appellant's demurrer, motion to dismiss, and motion for judgment; its motion to set aside findings of fact and conclusions of law entered by Commission and substitute therefor certain findings of fact and conclusions of law submitted by Appellant and for judgment; and its motion for new trial, all upon the grounds set forth in said instruments.

(c) Said Commission unlawfully applied retroactively the price and measurement base fixed by its legislative order 19514 to Appellant by Order 19515 in settling said claimed judicial dispute which arose, if at all,

between the parties on past facts and under a particular state statute, 52 O.S. 1941, 233, already in existence, thereby depriving Appellant of vested rights and defenses in the settlement of said purported dispute.

(d) Said order 19515 and said statute 52 O.S. 1941, 233, as applied to Appellant by said Court required Appellant to discriminate as to price and measurement base in favor of Appellee Peerless Oil and Gas Company and against other sellers of gas in said field in that said order is a special judicial directive, [fol. 1771] leveled solely against Appellant, requiring it to pay said Appellee a price per MCF of natural gas higher than the price being currently paid by Appellant under subsisting gas purchase contracts with other sellers in the field, which said contracts are specifically authorized by 52 O.S. 1941, 233, and in addition thereto, by reason thereof, takes Appellant's property without compensation and gives it to said Appellee without any justifying public purpose or due reciprocity of advantage therefor.

(e) Said statute 52 O.S. 1941, 233, sets forth no standard or policy to guide said Commission in acting thereunder and in effect reposes in said body an absolute unregulated, unbridled, undefined and arbitrary discretion in fixing the price and other terms for purchasing natural gas.

III

The Supreme Court of the State of Oklahoma erred in holding and deciding said Commission granted Appellant a fair and impartial trial and hearing in accordance with the procedural due process clause of the 14th Amendment, Section 1, Article XIV, U. S. Constitution:

(a) By refusing to inform Appellant in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

(b) By allowing the misjoinder of judicial and legislative matters;

(c) By erroneously consolidating judicial and legislative matters;

(d) By erroneously allowing Commissioners of the Land Office to file petition in intervention and intervene in the case;

[fol. 1772] (e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

(h) By allowing Commission's conservation attorney to participate and take an active part in trial of private dispute between Appellee Peerless and Appellant;

(i) By admitting incompetent and hearsay evidence and testimony and by making findings contrary to the undisputed and indisputable character of the evidence;

(j) By refusing to segregate and separate the evidence of Appellee Peerless, Land Office and others at the close of their testimony so Appellant could know what evidence pertained to the judicial phase of the case and what evidence pertained to the legislative phase of the case;

(k) By Commission's refusing to recognize, apply, and abide by its own subsisting orders.

IV

The Supreme Court of the State of Oklahoma erred in deciding that Order No. 19514 and the statute 52 O.S. 1941, 239, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not violate the commerce clause, Section 10, Article I, United States Constitution, because said order 19514 increases the going and market price of gas twofold in said field and is limited solely to one gas field to the exclusion of other gas fields in the State of Oklahoma, and 90% of all gas produced in said field and practically all of Appellant's gas is immediately, without [fol. 1773] interruption, transported and sold in interstate

commerce and by reason thereof said order 19514 and said statute 52 O.S. 1941, 239, as applied, cast an undue burden upon and discriminate against interstate commerce and the interstate operations of Appellant.

V

The Supreme Court of the State of Oklahoma erred in deciding that Order 19515 and the statute 52 O.S. 1941, 233, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not violate the commerce clause, Section 10, Article I, United States Constitution, because said gas being taken and purchased by Appellant from said Appellee Peerless Oil and Gas Company under subsisting stipulation in effect at the time of the making of said order 19515 is immediately, without interruption, transported in interstate commerce for resale and said order, being directed solely against Appellant and increasing two-fold the price of gas in said field, casts an undue burden upon and discriminates against the interstate operations and business of Appellant.

Wherefore, Appellant herein prays:

(a) for the allowance of an appeal from said Supreme Court of the State of Oklahoma, the highest court of said state, to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Oklahoma may be examined and reversed;

(b) that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk [fol. 1774] of the Supreme Court of the State of Oklahoma, may be sent to the Supreme Court of the United States as provided by law;

(c) for an order staying the decision of the Supreme Court of Oklahoma and all judgments and proceedings therein from which said appeal is taken and providing that the supersedeas bonds now on file in the above entitled case remain in full force and effect throughout the pendency of the said appealed proceedings and providing for such additional supersedeas bonds, if any, including security for costs on appeal, in the amount or amounts to be fixed and approved by the

Justice of the Court granting the order allowing such appeal; and

(d) that the decree, judgment, decision and opinion, as the case may be, of said Supreme Court of the State of Oklahoma be reversed and that a judgment be entered in favor of Appellant herein and for costs because of and for the errors set forth in said Assignment of Errors herein.

Dated this 19 day of May, 1950.

(Signed) Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Robert R. McCracken, Attorneys for Appellant, Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

[fols. 1775-1851] IN THE SUPREME COURT OF OKLAHOMA

No. 32,994

[Title omitted]

[File endorsement omitted]

ORDER ALLOWING APPEAL—Filed May 19, 1950

It appearing to the undersigned, the Chief Justice of the Supreme Court of the State of Oklahoma, that Plaintiff in Error, Cities Service Gas Company, in the above captioned cause, has filed its Petition for Appeal with Assignment of Errors to the Supreme Court of the United States, and also its statement as to the jurisdiction of the Supreme Court of the United States, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment, decree and decision of the Supreme Court of Oklahoma in the above entitled cause. [fol. 1852] Now, therefore, the premises considered, it is ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment, decree and decision rendered in this cause on January 17, 1950 and made final by denial of Petition for Rehearing by order of the Supreme Court of Oklahoma entered and effective March 21, 1950.

It is further ordered that enforcement of said judgment, decree and decision of the Supreme Court of Oklahoma be

and the same is hereby stayed pending final disposition of said appeal, said stay to become effective upon Appellant's filing with the Clerk of the Supreme Court of the State of Oklahoma supersedeas and cost bonds in the aggregate sum of $790,000.00, with sufficient surety to be approved by the undersigned as required by law in such cases.

It is further ordered that the supersedeas bonds given by said Appellant, Cities Service Gas Company, now on file in the above entitled case remain in full force and effect throughout the pendency of said appealed proceeding and that the above supersedeas and cost bonds hereby ordered to be given shall be in addition to the supersedeas bonds of Appellant now on file in said cause.

It is further ordered that the Clerk of the Supreme Court of the State of Oklahoma shall, within the time and as required by law, prepare, certify and transmit under his hand and the seal of the Supreme Court of the State of Oklahoma to the Clerk of the United States Supreme Court a transcript of the record herein containing a true copy of all material parts of said record which shall be designated by praecipe filed with him by any of the parties to said appeal.

[fols. 1853-1872] Dated this 19 day of May, 1950.

Denver N. Davison, Chief Justice of the Supreme Court of the State of Oklahoma.

Attest: Andy Payne, Clerk of the Supreme Court. By: W. F. Lemons, Assistant Clerk.

[fol. 1873] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32,994

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed May 19, 1950

To the Clerk of the Supreme Court of the State of Oklahoma:

You are hereby requested to make a complete transcript of the record in the above captioned case, No. 32,994, includ-

ing all exhibits to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause from the judgment, decree and decision of the Supreme Court of the State of Oklahoma entered January 17, 1950 and made final March 21, 1950 by denial of Petition for Rehearing and you shall also include in such transcript of the record the following:

(1) Petition of Appellant for Appeal from the Supreme Court of the State of Oklahoma to the Supreme Court of the United States and Assignment of Errors;

(2) Appellant's Statement of Jurisdiction;

[fol. 1874] (3) Order Allowing Appeal to the Supreme Court of the United States and Fixing the Supersedeas and Cost Bond therefor;

(4) Citation;

(5) Supersedeas and Cost Bond with the approval thereof;

(6) Statement and Notice Directing Attention of Appellee to provisions of Paragraph 3, Rule 12, of the Rules of the Supreme Court of the United States;

(7) Praecipe for Transcript of Record;

(8) Proof or Proofs of Service of all of the foregoing instruments upon the Appellees, namely, instruments 1 to 8, inclusive;

(9) Petition in Error of Cities Service Gas Company to the Supreme Court of Oklahoma in said cause No. 32,994;

(10) Order of the Supreme Court of Oklahoma consolidating cases Nos. 32,994 and 33,006;

(11) The Judgment, Decree, Decision and Opinion of the Supreme Court of Oklahoma dated January 17, 1950;

(12) Dissenting Opinions of Halley, J. and Gibson, J. in the above entitled cause;

(13) Petition of Cities Service Gas Company for Rehearing filed in the above entitled cause;

(14) Order Denying Petition for Rehearing of Appellant in said cause.

(Signed) Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Robert R. McCracken, First National Building, Oklahoma City, Oklahoma, Attorneys for Appellant, Cities Service Gas Company.

[fol. 1875] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1876] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1950

No. 73

STATEMENT OF POINTS RELIED UPON—Filed June 2, 1950

In compliance with Paragraph 9 of Supreme Court Rule 13 the appellant, Phillips Petroleum Company, states:

That it adopts its Assignment of Errors as its statement of the points relied upon.

[fol. 1877] Don Emery, Rayburn L. Foster, Harry D. Turner, R. M. Williams, Counsel for Appellant, Phillips Petroleum Company.

[fol. 1878] (Acknowledgment of service omitted in printing.)

[fol. 1878a] [File endorsement omitted.]

[fols. 1879-1880] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 153

STATEMENT OF POINTS ON WHICH APPELLANT RELIES—Filed June 27, 1950

In compliance with paragraph 9 of Supreme Court Rule 13, the Appellant Cities Service Gas Company states:

That it adopts its Assignment of Errors as its statement of the points to be relied upon on this appeal.

Glenn W. Clark, R. E. Cullison, Joe Rolston, Jr., Robert R. McCracken, First National Building, Oklahoma City, Oklahoma, Attorneys for Appellant, Cities Service Gas Company.

(Acknowledgment of service omitted in printing.)

[fol. 1880a] [File endorsement omitted.]

[fol. 1881] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 73

ORDER NOTING PROBABLE JURISDICTION—June 5, 1950

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 1882] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 73 and No. 153

STIPULATION COVERING PRINTING OF RECORD, HEARING, BRIEFING AND ARGUMENT OF CASES—Filed June 27, 1950

For the purpose of avoiding the printing of duplicate and unnecessary records in the two above entitled separate cases and in order to expedite and facilitate the consideration thereof by the Court, all the parties to the above entitled cases desire to and do hereby jointly request the Court, pursuant to this stipulation, to order that the record be printed and said cases briefed, heard and argued upon the following terms:

1. That a single record be printed for use in both cases embodying that part of the record in each case as the parties designate by this stipulation, and that forty copies of such record be printed for use of the Court and the parties.

2. The parties hereto declare that it is necessary to print, and do hereby designate for printing, the whole record on appeal filed in the above entitled Cities Service Gas Company case No. —— (which for the convenience of the Clerk has been made to include all of the record filed in the Phil-[fol. 1883] lips Petroleum Company case No. 821), except the following portions thereof:

(a) Pages 10 and 11 of the transcript of the record, showing acknowledgment of service of Cities Service Gas Company's petition in error in the Oklahoma Supreme Court, may be omitted in printing as immaterial and in

lieu thereof notation made to the effect that the parties acknowledge timely and proper service of said petition.

(b) Pages 44 and 45 of the transcript of the record, showing affidavit of mailing and service of Phillips Petroleum Company's petition in error in the Oklahoma Supreme Court, may be omitted in printing as immaterial and in lieu thereof notation made to the effect that the parties acknowledge timely and proper service of said petition.

(c) Pages 48 to 59, both inclusive, of the transcript of the record, showing Cities Service Gas Company's petition in error in the Oklahoma Supreme Court, may be omitted in printing because the same is a duplication of said petition in error shown on pages 1 to 9 inclusive of said transcript.

(d) Pages 889 to 902, both inclusive of the transcript of the record, showing Order No. 19515 of the Corporation Commission of the State of Oklahoma in cause No. 1054, may be omitted in printing because the same is a duplication of said Order No. 19515 shown on pages 28 to 43 inclusive of said transcript.

(e) Pages 919, 920, 921, 922, 923, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951 and 952 of the transcript of the record showing, respectively, order for record for appeal, application for supersedeas bond and proceedings with respect thereto, application of Republic Natural Gas Company for stay of Orders Nos. 19514 and 19515, order granting supersedeas by Corporation Commission and notation with respect to supersedeas bonds, may be omitted in printing as immaterial and in lieu thereof notation made to the effect that supersedeas was properly requested and granted and supersedeas bonds filed and said Orders 19514 and 19515 of the Corporation Commission of Oklahoma were stayed pending appeal to the Supreme Court of Oklahoma.

(f) Page 965 of the transcript of the record, Exhibit 6, being letter of Margaret A. Davis dated February 16, 1946, to the Corporation Commission of Oklahoma requesting that she be made a party to the proceedings then pending [fol. 1884] before the Corporation Commission may be omitted in printing as immaterial.

(g) Page 1046 of the transcript of the record, Exhibit 26, being isobar map of the Hugoton Field showing pressure differentials, may be omitted in printing as immaterial.

(h) Page 1134 of the transcript of the record, notation with respect to Exhibit 69, concerning blank form of well log used by Corporation Commission, may be omitted in printing as immaterial.

(i) Pages 1247, 1248 and 1249 of the transcript of the record, Exhibit 75, being form of well log used by Corporation Commission, may be omitted in printing as immaterial.

(j) Pages 1712 to 1742, both inclusive, of the transcript of the record, showing Statement of Jurisdiction of Phillips Petroleum Company in case No. 821, Supreme Court of the United States, October Term, 1949, has already been printed and may be omitted.

(k) Pages 1746 to 1763, both inclusive, of the transcript of the record, showing citation, supersedeas, and cost bond, service of papers on appeal and notice of paragraph 3, Rule 12, of the Supreme Court of the United States in the appeal of Phillips Petroleum Company No. 821, and pages 1854 to 1872, both inclusive, showing citation, supersedeas and cost bonds, service of papers on appeal and notice of paragraph 3, Rule 12, of the Supreme Court of the United States in the appeal of Cities Service Gas Company, may be omitted in printing and in lieu thereof the following notation inserted:

> "Supersedeas and cost bonds in the respective appeals of Phillips Petroleum Company and Cities Service Gas Company in the aggregate amount of $1,400,000 given and approved and are omitted in printing. Citations and proof of service of all papers on appeal and notice of paragraph 3, Rule 12 of the Rules of the Supreme Court with acknowledgment of service in the appeals of Phillips Petroleum Company and Cities Service Gas Company also omitted in printing."

(l) It is further stipulated that all verifications may be eliminated, duplication of opinions, orders and exhibits omitted, proofs of service of process and notices omitted and proper notations made with respect thereto, including:

> "Parties acknowledge timely and proper service was made of all process and notices required to be served or given."

(m) Pages 1586 to 1673 inclusive, showing brief of Phillips Petroleum Company in support of its petition for re-

hearing in the Supreme Court of Oklahoma may be omitted in printing as immaterial.

[fol.1885] 3. That the designation of the parts of the record to be printed, heretofore filed by Phillips Petroleum Company in case No. 821, is withdrawn and shall be disregarded by the clerk.

4. That the above captioned cases be briefed separately but consolidated for argument and called for hearing on the same day, the opening argument of Appellant Cities Service Gas Company in case No. — to be first presented, followed immediately by the opening argument of Appellant Phillips Petroleum Company in case No. 821, the response of Appellees thereto following, and respective Appellants to conclude argument in order first presented; that Appellants collectively and Appellees collectively each be allowed a minimum of two and one-half hours for argument, which all the parties agree is essential to a fair and adequate presentation of the respective appeals.

Dated this 23 day of June, 1950.

The State of Oklahoma, by Mac G. Williams, Attorney General, Fred Hansen, Assistant Attorney General. Corporation Commission of the State of Oklahoma, by Floyd Green, Its Attorney. Peerless Oil and Gas Company and Texas County Land and Royalty Owners Association, by D. A. Richardson, Attorney. Commissioners of the Land Office of the State of Oklahoma, by Thomas J. Lee, Attorney. Phillips Petroleum Company, H. D. Emery, by R. M. Williams, Attorney. Cities Service Gas Company, Glenn W. Clark, by Joe Rolston, Jr., Attorney, Robert F. McCracken.

[fol. 1886] [File endorsement omitted]

Endorsed on Cover: Enter Joe Rolston, Jr. File No. 54,659. Oklahoma Supreme Court, Term No. 153. Cities Service Gas Company, Appellant, vs. Peerless Oil and Gas Company, The Corporation Commission of the State of Oklahoma, et al. Filed June 27, 1950. Term No. 153 O. T. 1950.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 73

PHILLIPS PETROLEUM COMPANY,
Appellant,

vs.

THE STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT AS TO JURISDICTION

DON EMERY,
RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 821

PHILLIPS PETROLEUM COMPANY,
A CORPORATION,
Appellant,

vs.

THE STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, A CORPORATION; COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, AND CITIES SERVICE GAS COMPANY, A CORPORATION,
Appellees.

STATEMENT OF JURISDICTION

Pursuant to Paragraph 1 of Rule 12 of the Supreme Court of the United States, the appellant above named files the following statement particularly disclosing the basis upon which appellant contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of Oklahoma in the consolidated cases of *Cities Service Gas Company* v. *Peerless*

Oil and Gas Company, et al., No. 32,994, and *Phillips Petroleum Company* v. *State of Oklahoma, et al.*, No. 33,006, dated January 17, 1950 and appealed from here in.

I. Statutory Provision Believed to Sustain Jurisdiction

The statutory provision believed to sustain the appellate jurisdiction is Section 1257 of Title 28, United States Code, which provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

II. The Statutes of the State, the Validity of Which Is Involved

The statutes of the State of Oklahoma, the validity of which is involved, are as follows:

(a) Order No. 19514 of the Corporation Commission of Oklahoma dated December 9, 1946, which provides:

"ORDER

"It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

> "1. That no natural gas shall be taken out of the producing structures or formations of the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the well-head, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"2. This order shall be effective as of January 1st, 1947.

"Done and Performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946."

A full, true and complete copy of said order and the findings upon which the same is based is hereto attached and by reference made a part hereof.

The Supreme Court of Oklahoma in the judgment appealed from held that said order is "legislative in character" and subject to the rules and principles "by which the validity of statutes are determined". The opinion of said court is appended hereto. The Supreme Court of the United States in the case of *John P. King Manufacturing Co.* v. *City Council of Augusta*, 277 U. S. 100; *Sultan Railway and Timber Co.* v. *Department of Labor and Industries of the State of Washington*, 277 U. S. 135; *Albert W. Hamilton* v. *Regents of the University of California*, 293 U. S. 245; *Livcoak Water Users Association* v. *Railroad Commission*, 269 U. S. 354; holds that a legislative order of a state administrative body, such as the Corporation Commission of Oklahoma, is "a statute" of a state within the meaning of a statute of the United States giving the Supreme Court jurisdiction on appeal where there is drawn in question "the validity of a statute of any state".

(b) Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, Oklahoma Statutes, 1941, insofar and to the extent that said statute is held to authorize said Corporation Commission Order No. 19514. Said act in general authorizes the Corporation Commission of Oklahoma to regulate the production and taking of gas in Oklahoma so as to prevent waste, protect the rights of the public and of those having a right to produce from a common

source of supply within the state. The pertinent language of the act held by the Supreme Court of Oklahoma to authorize said Order No. 19514 is the following language of Section 4, Section 239, Title 52, O. S. 1941, namely:

> "The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another."

"Waste" as used in said statute is a term defined by Section 2 thereof, Section 237, Title 52, O. S. 1941, to mean:

> "The term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas."

Section 12 of the aforesaid statute, Section 247, Title 52, O. S. 1941, provides as penalties for its violation the following:

> "In addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in the sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment."

III. Date of Judgment and Denial of Petition for Rehearing

The judgment appealed from was entered on the 17th day of January, 1950 (not yet officially reported), copy of which is appended hereto. Application of appellant for a rehearing thereof was denied by the Supreme Court of Oklahoma on March 21, 1950.

IV. Date of Petition for Appeal

Petition for appeal to this court was presented to the Honorable Chief Justice of the Supreme Court of Oklahoma on the 7th day of April, 1950.

V. Nature of Case and Rulings of the Court Bringing the Case Within the Jurisdictional Provisions Relied On.

The judgment of the Supreme Court of Oklahoma from which this appeal is taken was on direct appeal by appellant to that court from the aforesaid Order No. 19514 of the Corporation Commission of Oklahoma dated December 9, 1946, prohibiting producers in the Guymon-Hugoton Gas Field in Texas County, Oklahoma, from producing their gas for any purpose "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch", and on appeal from Order No. 19702 of said Commission dated February 4, 1947, denying appellant's application to vacate or clarify said Order No. 19514, both appeals having been consolidated in the Supreme Court of Oklahoma and the one judgment entered therein.

The proceedings before the Corporation Commission that gave rise to said Order No. 19514 originated with the filing of an application by appellee, Peerless Oil and Gas Company, a producer of gas in the Guymon-Hugoton Field, as

sole applicant, against appellee, Cities Service Gas Company, both a producer and common purchaser of gas, as sole respondent, to require said respondent, as a purchaser, to take and purchase gas from the applicant's wells ratably with other wells to which the respondent was connected at a price to be fixed by the Commission and asking that "in fixing the price of said natural gas" the Commission "fix the price to be paid by all purchasers in the field." During the course of the proceeding a group of land and royalty owners, members of the appellee, Texas County Land and Royalty Owners Association, and the appellee, Commissioners of the Land Office of the State of Oklahoma, owner of lands in the field, intervened on the side of the applicant.

As disclosed by the judgment of the Supreme Court of Oklahoma and the record in the case, appellant, Phillips Petroleum Company, is a substantial producer of gas in the Guymon-Hugoton Field, owning oil and gas leases on approximately 183,000 acres of land and which, having no other market for its gas, installed its own gathering system, gathers such gas to a central point in Hansford County, Texas, where, together with other gas owned by appellant, it is processed in appellant's own gasoline plant for the extraction of the gasoline and other liquid hydrocarbon content, and then sells the residue gas to a pipe line purchaser for delivery in Texas under a firm long-term contract, and after further refinement sells or otherwise usefully utilizes the gasoline and liquid hydrocarbons so extracted. It makes no wellhead or other sales of its gas in Oklahoma. At no place in the record or in the judgment of the Supreme Court of Oklahoma is it claimed, nor is it a fact, that appellant is taking more than its fair and ratable share of the gas from the field as established by the allowable orders of the Corporation Commission; that its taking and utilization of its own gas is in any way wasteful, unlawful or otherwise

improper; or that it is a party to any dispute with any other producer or with any purchaser as to price or other terms and conditions of taking gas from the field.

Not being either a seller or purchaser of gas in its natural state in the field, having no dispute with anyone or any problem regarding the sale, purchase or price of its gas, and no question ever having been raised regarding its taking and use of its own gas, appellant did not consider itself involved and did not intervene or in any way take part in the Commission hearing or proceedings leading up to the order herein complained of.

The Corporation Commission concurrently made two orders: one, Order No. 19515, directed against Cities Service Gas Company, requiring it as a purchaser to take gas from the wells of applicant, Peerless Oil and Gas Company, ratably with gas from the other wells to which said purchaser was connected and fixing the price to be paid therefor; the other, Order No. 19514, herein involved, directed not against any purchaser but against producers generally prohibiting the production of gas except at a designated "price".

It appearing from the order and the Supreme Court of Okkahoma having that Order No. 19515 applies only as between Peerless Oil and Gas Company and Cities Service Gas Company, such order is not involved in this appeal by the appellant, Phillips Petroleum Company. Phillips Petroleum Company, however, a producer, is directly and vitally affected by Order No. 19514 purporting to relate to all producers in the field.

Appellant's first appearance in the proceeding was by application filed with the Corporation Commission on January 17, 1947, to vacate said Order No. 19514, insofar as applicable to appellant or, in the event of refusal to so vacate the same, to clarify such orders as applied to gas not sold

at the wellhead, which application was denied by the Commission on January 31, 1947.

Applicant in due time, and as authorized by the laws of the State of Oklahoma, appealed to the Supreme Court of the state from said Order No. 19514 and from the order denying the application to either vacate or clarify the same.

The appellant in its aforesaid application to vacate or clarify said Order No. 19514, in its Assignments of Error on appeal to the Supreme Court of the State of Oklahoma, in its briefs in the Supreme Court of Oklahoma, in its Petition for Rehearing before said court, and in its Assignment of Errors on appeal to this court, has repeatedly assigned as error and contended, among other things, that said Order No. 19514 and that the statutes of the state insofar as they authorize said order are repugnant to the Constitution and laws of the United States in the following respects and for the following reasons:

(1) The order deprives appellant of its liberty and property with due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because of being vague, indefinite and uncertain in that it fails to provide, first, whether appellant is permitted to gather, process and elsewhere than at the wellhead sell or otherwise utilize its own gas or whether it must sell the same in its natural state to others at "the wellhead" in order to get the prescribed "price at the wellhead", or second, if such taking and utilization by appellant of its own gas is permitted and it gets no "price at the wellhead" for the gas, how appellant can from day to day determine whether or not it is in compliance with the order, a violation of which is by law made the subject of severe penalties. That such a situation and contention draw into question the validity of a statute or legislative order of the state under the due process clause of the Constitution of

the United States giving this court jurisdiction on appeal is made clear by the rule stated by this court in the case of *Connally* v. *General Construction Company*, 269 U. S. 385, 391, as follows: "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." If the order is interpreted to require a wellhead sale of the gas, it would violate due process as being unreasonable, arbitrary and capricious under the principle stated in the paragraph next below.

(2) As applied to appellant, the order deprives appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because of being arbitrary, unreasonable and confiscatory, has no reasonable relationship to the object of its enactment and goes beyond the reasonable demands of the occasion. Sustaining the jurisdiction of this court in such respect is the case of *Barns Baking Company*, v. *Bryan*, 264 U. S. 504, 513, wherein this court said, "But a state may not, under the guise of protecting the public, arbitrarily interfere with private business, or prohibit lawful occupations, or impose unreasonable and unnecessary restrictions upon them. (Citing cases). Constitutional protection having been invoked, it is the duty of the court to determine whether the challenge provision has reasonable relation to * * * and really tends to accomplish the purpose for which it was enacted." See also *Thompson* v. *Consolidated Gas Utilities Corporation*, 300 U. S. 55, 69, wherein this court said "But, obviously, the proration orders would not be valid if shown to bear no reasonable relation either to the prevention of waste or the protection of correlative rights, or if shown to be otherwise arbitrary." Here the record will show

(a) appellant does not now get nor does it have any reasonable means under the order of getting the prescribed "wellhead price" for its gas; (b) that to comply with the order appellant has no alternative other than to shut in its gas wells to its great detriment and irreparable damage; (c) the order discriminates between producers having a wellhead market for their gas at the prescribed price and the appellant which does not have such a market or means of getting such a price; (d) no waste or threatened waste of natural gas is prevented thereby; (e) no interests of the public are protected thereby; (f) no interests of those having a right to produce from the common source of supply are protected thereby; (g) the order does not prevent unreasonable discrimination between separate common sources of supply of gas but on the other hand results in such discrimination; (h) the purported objects to be accomplished by such order could more readily and more reasonably have been accomplished and dealt with in a direct and more effective way; and (i) enforcement of the order against appellant will be confiscatory of its property, having a value of many millions of dollars.

(3) The order denies to appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it applies only to the producers in one of numerous gas fields in the state without any adequate or justifiable basis or reason for singling out, classifying and so discriminating against such producers for the purpose of special legislative action. Sustaining the jurisdiction of this court to review such a situation and contention with respect to such an unreasonable and arbitrary classification in respect to legislative action is the rule announced by this court in *Quaker City Cab Company* v. *Pennsylvania*, 277 U. S. 389, 400, as follows: "The equal protection clause does

not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.'" There is no reasonable basis for discriminating, as does the order complained of, against the producers in only one gas field in the state. The Commission makes no finding in respect thereto. The Supreme Court of Oklahoma in its judgment does not attempt to justify the same.

(4) The order denies to appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because it unreasonably discriminates between producers in the Guymon-Hugoton Field who have a market for or otherwise sell their gas in such a manner as to get therefor the prescribed "price at the wellhead" and producers who otherwise take and utilize their own gas, there being no reasonable basis or justifiable reason for so discriminating between producers in the same common source of supply of gas.

(5) Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, O. S. 1941, to the extent that such statute is construed by the Supreme Court of Oklahoma to authorize Order No. 19514, contravenes all the provisions of the Constitution of the United States hereinabove referred to for the same reasons that the order as found to be authorized thereby contravenes such constitutional provisions, all as set out in paragraphs numbered 1 to 4 above.

The ruling of the Supreme Court was such as to bring the case within the jurisdictional provisions relied upon in

that its decision was in favor of the validity of the order complained of and the statute under which the court said the order was authorized, the validity of which was drawn into question on the ground of being repugnant to the above cited provisions of the Constitution of the United States. The court said, "We find no basis in the due process and equal protection clause of the Federal and State Constitutions for condemning the orders appealed from in their application to Phillips. The orders appealed from are affirmed."

VI. Manner in Which Federal Questions Were Raised

The federal questions thus presented were raised by appellant as grounds for its application filed with the Corporation Commission to vacate or clarify the order complained of, next as assignments of error in its petitions in error to the Supreme Court in the Consolidated appeals from which this appeal is taken, next in its briefs filed in such consolidated appeals, and next as grounds for rehearing in its petition for rehearing filed in the Supreme Court of Oklahoma.

Although the Supreme Court of Oklahoma in its opinion discusses the case primarily from the standpoint of Cities Service Gas Company and disposes of the appeals of appellant by reference to its decision with respect to Cities Service Gas Company, the opinion clearly shows the federal questions to have been raised and decided by the court. The opinion in part states:

> "Subsequent to the effective date of these orders Phillips Petroleum Company filed an application to vacate or modify the price fixing provision of the orders. After a hearing wherein evidence was introduced, the Commission entered an order denying the application to vacate.

"Cities Service appeals from the two price-fixing orders. Phillips appeals from these orders and from the order denying its application to vacate.

. . . . . .

"The primary question presented in these appeals arises from the order of the Commission fixing a minimum price on natural gas in the field.

. . . . . .

"Phillips here adopts the brief of Cities Service and with enlargement of argument here presents similar contentions concerning the authority of the Commission to make the orders appealed from and *the constitutionality of the orders appealed from.*

"Our discussion of the Cities Service appeal is here applicable. *We find no basis in the due process and equal protection clause of the Federal and State Constitutions* for condemning the orders appealed from in their application to Phillips.

"The orders appealed from are Affirmed.

"Davison, C. J., Arnold, V. C. J., and Corn and Johnson, JJ., concur. Gibson, Luttrell, Halley, and O'Neal, JJ., dissent." (Emphasis supplied.)

VII. The Federal Questions Involved Are Substantial

The federal questions presented on this appeal are substantial for the reasons and upon the grounds stated in Subhead V of this Statement of Jurisdiction and for the reason that the decisions thereof are controlling in this case. The whole question of the applicability and validity of Order No. 19514 and the statute said to authorize the same, as related to appellant, depends upon the decision of the federal questions thus presented.

VIII. Cases Believed to Sustain Jurisdiction

In addition to the cases cited under Subhead V above, the following decisions of this court are believed to sustain

the jurisdiction of this appeal: *Hamilton* v. *Regents of University of California*, 293 U. S. 245; *Winters* v. *People of State of New York*, 333 U. S. 507; *Bluefield Improvement Co.* v. *Public Service Commission*, 262 U. S. 679; *Tregea* v. *Modesto Irrigation District*, 164 U. S. 179; *Foster* v. *Kansas ex rel.*, 112 U. S. 205.

IX. Judgment and Opinions Appended Hereto

Copies of the judgment of the Supreme Court of Oklahoma and all opinions of the several justices of the court in respect thereto, consisting of a majority opinion of the court filed January 17, 1950, a dissenting opinion filed the same day by Halley, J., and a dissenting opinion by Gibson, J., filed March 22, 1950, are appended hereto.

In addition, the order sheet of the Supreme Court of Oklahoma dated March 21, 1950, contains the following statement:

> "The Clerk is hereby directed to enter the following orders:
>
> 32,994—Cities Service Gas Company, a Corporation, v. Peerless Oil and Gas Company, a corporation, et al.
> 33,006—Phillips Petroleum Company, a Corporation v. State of Oklahoma, et al.
>
> Petitions for rehearing and oral argument in the above consolidated causes denied."

It is therefore respectfully submitted that this court has jurisdiction of this appeal under Section 1257 of Title 28, United States Code.

DON EMERY,
RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
Attorneys for Appellant Phillips Petroleum Company.

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32,994

CITIES SERVICE GAS COMPANY, a Corporation, *Plaintiff in Error*

v.

PEERLESS OIL AND GAS COMPANY, a Corporation, et al., *Defendants in Error*

No. 33,006

PHILLIPS PETROLEUM COMPANY, a Corporation, *Plaintiff in Error*

v.

STATE OF OKLAHOMA, et al., *Defendants in Error*

SYLLABUS:

1. The grant of power to the Corporation Commission under 52 O. S. 1941, § 239 to regulate the taking of natural gas from a common source of supply "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom," by necessary implication includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

2. The provisions of 52 O. S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

3. Price Control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demon-

strably irrelevant to the policy which the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.

4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the State, in the exercise of its power, to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

5. The Commerce Clause of the Federal Constitution does not preclude the State in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed before the operation of interstate commerce occurs.

Appeal from Order of Corporation Commission of Oklahoma fixing a minimum price consideration in the taking of natural gas from the Guymon-Hugoton Field in Oklahoma, and from order for ratable taking of gas made in favor of the Peerless Oil and Gas Company. The Cities Service Gas Company appeals. The Phillips Petroleum Company appeals.

AFFIRMED

Glenn W. Clark, R. E. Cullison, and Joe Rolston, Jr., Okla. City, Okla., for Cities Service Gas Co.

Don Emery, Rayburn L. Foster, R. B. F. Hummer, Harry D. Turner and R. M. Williams, for Phillips Petroleum Company.

Earl Pruet, Okla. City, for Peerless Oil and Gas Company and Texas County Land Royalty Owners Association.

Richardson, Shartel, Cochran & Pruet, of Counsel.

Mac Q. Williamson, Floyd Green, Earl Pruet, W. D. McBee, for Defendants in Error.

Floyd Green, John Blanton, Charles F. White, for State of Oklahoma.

W. D. McBee, for Commissioners of The Land Office.

T. Murray Robinson, Amicus Curiae.

Robinson, Shipp & Robertson, of Counsel.

WELCH, *J.*:

Peerless Oil and Gas Company, owner of a gas well and certain oil and gas leases on lands located in the Guymon-Hugoton Gas Field in Texas County, filed with the Corporation Commission an application for an order requiring Cities Service Gas Company to connect its pipeline to the gas well and take and receive the natural flow of gas from the well ratably with its taking of gas from other wells of the field, and further that the Commission fix the price at which said gas should be taken and fix the price for all natural gas produced in the Guymon-Hugoton Gas Field in Oklahoma. Peerless alleged drainage by Cities Service and failure of agreement with Cities Service for the taking of gas from its well, and particularly a disagreement as to the price for the gas.

Cities Service filed answer admitting its ownership of a pipeline system and that it was taking gas from the field through its lines and stated an offer to take gas from the Peerless wells ratably with its taking of gas from other wells in the field and at the average price paid for gas in the field. Cities Service alleged a usage of its pipeline in the furtherance of a business of producing natural gas for transportation and sale in interstate Commerce and asserted that the Corporation Commission was without power or authority to regulate its facility and business, and, particularly, to order the price and terms for taking or purchasing gas in the field.

After hearing of the Peerless application had commenced the Corporation Commission permitted the State of Oklahoma, on relation of the Commissioners of the Land Office, to file petition in intervention. The Land Office alleged ownership in trust for the State of a large acreage of land

in the gas field and surrounding areas. It asserted that monopolistic price and arbitrary measurements for gas prevailed in the field, and was resulting in dissipation and exhaustion of gas from the common source of supply at a fraction of its intrinsic value, and that such taking was resulting in wanton economic waste. The Land Office prayed that the Corporation Commission fix a minimum price and a certain standard of measurement applicable to all gas in the field and to be applied upon its removal from the natural reservoir.

The Commission published notice of the time and place of a hearing to be held upon the Land Office petition, with invitation to all persons interested to appear and be heard. The notices were directed to certain named companies and to "all operators, purchasers, and takers of gas in Oklahoma, and particularly in Guymon-Hugoton Field in Texas County, Oklahoma."

In the course of the proceeding a petition was filed requesting the Commission to fix a minimum price for gas in the field signed by several persons as royalty owners and under a designation as members of the Texas County Land and Royalty Owners' Association.

The Commission, after the series of hearings above mentioned, and after hearing testimony from witnesses presented by Peerless, the Land Office, Cities Service and the testimony of various other persons, entered a general order that on and after a certain future date, therein mentioned, "no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch." The Commission issued a further order to become effective on the same date directed to Cities Service ordering that Company to take gas from the Peerless wells ratably with its taking from other wells in the field and as ratable taking is prescribed in a certain former general order of the Commission, and that Cities Service pay the Peerless for the gas so taken not less than 7¢ per thousand cubic feet welihead price measured at a pressure of 14.16 pounds pressure per square inch.

Subsequent to the effective date of these orders Phillips Petroleum Company filed an application to vacate or modify the price fixing provision of the orders. After a hearing wherein evidence was introduced, the Commission entered an order denying the application to vacate.

Cities Service appeals from the two price fixing orders. Phillips appeals from these orders and from the order denying its application to vacate.

During the pendency of the Peerless application Peerless and Cities Service entered into an agreement for a ratable taking of gas from the Peerless wells by Cities Service, leaving unsettled the price to be paid for the gas.

The primary question presented in these appeals arises from the order of the Commission fixing a minimum price on natural gas in the field.

Cities Service presents argument under the following statements:

"1. No constitutional or statutory power is granted Commission, either expressly or by necessary implication, to fix by general order the price or other terms for taking or purchasing natural gas in the field.

"2. 52 O. S. 1941, Section 233, purporting to authorize Commission in case of dispute to fix price and other terms for taking or purchasing natural gas as between individual parties, is unconstitutional because:

(a) It sets forth no policy or standard to guide Commission in acting thereunder (Articles IV and V, Oklahoma Constitution).

(b) It violates the equal protection clause of the Federal Constitution (Section 1, Article XIV, U. S. Constitution):

and

(c) It violates the due process clauses of the Oklahoma and Federal Constitution (Section 7, Article II, and 14th Amendment; as well as Sections 2 and 23, Article II, Oklahoma Constitution, and Section 59, Article V, Oklahoma Constitution).

"3. If this Court should hold Commission under existing law is either expressly or impliedly granted natural gas price fixing powers under some conceivable circumstances, the same are constitutional as applied herein because:

(a) Price fixing has no reasonable relationship to waste, protection of correlative rights, or conservation of natural resources:

(b) It casts a burden on, impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution (Clause 3, Section 8, Article 1);

(c) It denied Cities due process and the equal protection of the law (14th Amendment, Oklahoma Constitution).

"4. If this Court should hold Commission is under present laws granted constitutional or statutory price fixing powers, then existing laws are not self-executing but require Commission, in advance of an attempt on its part to enforce the taking or purchasing of natural gas, to specify with clarity and particularity the elements constituting the basis of such taking or purchasing so as to enable the parties concerned to effectuate fully and fairly a completed contract.

"5. If this Court should hold Commission is granted under present laws constitutional and statutory price fixing powers and existing laws are self-executing, then Commission in exercising its authority thereunder is confined to ascertaining and applying the going or market price and other nondiscriminatory equitable terms for taking or purchasing natural gas prevailing in the field.

"6. The orders of the Commission are void because of vagueness, indefiniteness, and uncertainty.

"7. Commission erred in denying Cities' motions and demurrers;

(a) Motion to allow inspection and copy of certain records and documents of Peerless material to judicial phase of case;

(b) Demurrer, motion to dismiss, and motion for judgment in judicial phase of the case;

(c) Combined demurrer, motion to dismiss, and motion for judgment in the legislative phase of the case;

(d) Motion to set aside findings of fact and conclusions of law in order entered by Commission in judicial phase of the case and substitute therefor certain findings of fact and conclusions of law submitted by Cities and for judgment;

(e) Motion for new trial in judicial phase of the case.

"8. The findings and orders of Commission are not supported by substantial, competent evidence and are contrary to the undisputed evidence.

"9. Commission failed to grant Cities a fair and impartial trial and hearing in accordance with the due process clauses of the Oklahoma and Federal Constitutions (Section 7, Article II, Bill of Rights, Oklahoma Constitution; Section 1, Article XIV, U. S. Constitution);

(a) By refusing to inform Cities in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

(b) By allowing the misjoinder of judicial and legislative matters;

(c) By erroneously consolidating judicial and legislative matters;

(d) By erroneously allowing Land Office to file petition in intervention and intervene in the case;

(e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

(h) By allowing Commission's Conservation attorney to participate and take an active part in trial of private dispute between Peerless and Cities;

(i) By admitting incompetent and hearsay evidence and testimony;

(j) By refusing to segregate and separate the evidence of Peerless, Land Office and others at the close of their testimony so Cities could know what evidence pertained to the judicial phase of the case and what evidence pertained to the Legislative phase of the case;

(k) By Commission's refusing to recognize, apply, and abide by its own subsisting orders."

Since 1913, Laws 1913, ch. 198, Secs. 1, 2, 3, 52 O. S. 1941, Sections 231, 232, 233, the statutes of this state have provided that owners might take, from a common source, amounts of gas proportionate to the natural flow of their respective wells, but not more than 25% of that natural flow without consent of the Corporation Commission; that any person taking gas from a gas field, except for certain specified purpose, "shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission. * * *"

Obviously, the protection of the interest of all owners of the gas is the intent of the statute and such is the standard of guidance to the Corporation Commission acting thereunder.

Various types of state regulatory schemes providing for ratable taking and designed to protect the "coequal rights" of the several owners of common source of supply have been sustained, Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L.

Ed. 729, 20 S. Ct. 576; Bandini Petf. Co. v. Superior Ct. 284 U. S. 8, 76 L. Ed. 136, 52 S. Ct. 103, 78 A. L. R. 826; Patterson v. Stanolind Co. 305 U. S. 376, 83 L. Ed. 231, 58 S. Ct. 259. In Republic Natural Gas Co. v. State et al., 198 Okla. 350, 180 P. 2d 1009, an order of such an effect by the Corporation Commission was sustained.

In reference to provisions of sec. 233, supra, and an order of the Corporation Commission made pursuant thereto requiring producer of gas to take ratably from well of another producer in the field, it was held that a foreign corporation obtaining permission to do business and produce natural gas in this state may not question constitutionality of the statute. The decision of this court affirming the Commission was appealed to the United States Supreme Court, Republic Natural Gas Co. v. State, et al 334 U. S. 62, 92 L. ed. 1212. That court held, in an opinion by Justice Frankfurter, that by reason of matters left open by the Commission's order, this court's judgment lacked the finality requisite to a review there. In the majority opinion reference is made to the order of the Commission as going no further than to require ratable taking of gas and the probability that the Commission will be later asked to determine specific terms of the taking including the price to be paid for the gas. Reference is made to price fixing as being inherently provocative of constitutional claims and to the probability of additional federal question arising out of the controversy. Four members of the Court joined in dissent. In a dissenting opinion by Justice Rutledge containing a discussion of the case on its merits, it is said:

> . . . . In "a line of cases beginning a half century ago with Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed 729 20 S. Ct. 575, this Court has upheld various types of state regulatory schemes designed to prevent waste and to protect the "coequal rights" of the several owners of a common source of supply. Those cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights."

After stating a conclusion that a state may require ratable taking in the preservation of correlative rights in a common source of supply, it was further said:

> "The remaining narrow issue is whether the most practical method of achieving a fair accomodation of the correlative rights of the parties is invalid because Republic is required to take and to pay for gas that it does not want—at least does not want if it must pay for it."
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> * * * * * * *
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> "The fact that Republic is compelled either to purchase Peerless' gas or to carry it to market and account for the profits does not make the regulation unreasonable. If that were the sole cause for complaint, the state could take the more drastic step of requiring all the well owners to shut down completely until all were able to produce on a ratable basis or came to some agreement effective to make this possible. It is clearly within the state's power to require Republic to compensate Peerless for the gas drained from under the Peerless land. Patterson v. Stanolind Oil & Gas Co., 305 U. S. 376, 83 L. ed. 231, 59 S. Ct. 259. Here, instead of requiring Republic to make a cash payment based on the estimated amount of drainage, the commission has selected what is unquestionably a more accurate method of adjusting the correlative rights. Even if it could be assumed that this method imposed a somewhat heavier burden of Republic than possible alternatives, it does not follow that the method selected by the Commission is unconstitutional. For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solutions to the thorny problems that accompany regulation in this highly technical field. Railroad Commission v. Rowan & Oil Co., 310 U. S. 573, 84 L. ed 1368, 60 S. Ct. 1021. Keeping in mind the fact that property law is peculiarly a matter of local concern, the special difficulty of defining and regulating property rights in natural

gas, the respect due to experts in this field, and the rather unusual facts this record presents, I cannot say that the state is without power to enter this order.

"It is suggested that the order, since it includes the requirement of purchase and not merely of transportation and accounting for profits, becomes invalid because it shifts from Peerless to Republic the business risk incident to ownership and sale of the gas. Possibly this might furnish a more serious basis for objection in materially different circumstances. But, apart from what has already been said, in those now presented I conceive no substantially greater harm to be possible from the order's operation, than depriving Republic of the rights to drain gas from beneath Peerless' lease without liability to pay for the gas so drained.

"This assumes that if the parties should be unable to agree upon terms the Commission will fix them in a manner taking due account of prevailing market conditions relevant to the price to be paid, as well as reasonable compensation for the use of Republic's facilities. With those limitations properly applied, it is hard to see what great business risk will be shifted to Republic. For, as we have already noted, the commodity is one not subject to storage, must be sold as soon as it is transported to the point of consumption, and therefore cannot be subject to possible wide fluctuation in selling price between the times of purchase and sale by Republic."

We think it clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the State, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under such terms as the parties may agree upon; or in default of agreement, to take such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative con-

sistent with production by both to protect the one from drainage by the other.

The Commission's order, made under the provisions of Sec. 233, supra, directing that Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken is not less that 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

In 1915 provision was made for regulation of the extraction of natural gas, not only to prevent excessive drainage as between producers, but for the prevention of waste and for the protection of the interest of the public and the interest of all those having a right to take from a common reservoir.

It was provided, Laws 1915, Ch. 197, § 4, 52 O. S. 1941, §239, that when the full production from a common source of supply of natural gas is in excess of the market demands a producer from such common source of supply may take therefrom only such proportion as may be marketed without waste, and in such proportion as the natural flow of the well or wells of such producer bears to the total natural flow of the field, having due regard to the acreage drained by each well; provided that the Corporation Commission may permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The Statute provides that "the said commission is authorized and directed * * * to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one source of supply as against another."

The succeeding section 240 provided as follows:

> "Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser

thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. (Laws 1915, ch. 197, Sec. 5)."

Obviously the impelling reason for discrimination in the taking of gas from one source of supply as against another rests in economic consideration and it is obvious that a practical and ready means of preventing such discrimination appears with control of the price of gas at its original source, or at the "wellhead" in each of the particular fields. Reference to protection of the interest of all those having a right to produce gas from a common source of supply directs attention to the owners of the land overlying the gas and such interests as they have conveyed. Doubtless because of the technical and financial requirements in taking gas from its natural place, it has long been the general

practice of landowners to lease the privilege of taking gas from under their lands and usually in consideration of a royalty of ⅛th or a particular part of the gas so taken or its equivalent marketed. Because of such technical and financial requirements in the development of a gas field and necessary to the marketing and commercial use of gas, landowners are usually compelled to enter into such leasing arrangements as the only means of securing an exploration and development of their gas resources. In the very nature of the product, landowners cannot accept delivery of gas so produced but must trust to producers for a proper handling of their share of the production. Such reserved or royalty interests are transferable and oftimes are sold in whole or in part.

As suggested by Justice Rutledge in Republic Nat. Gas. Co. v. State, supra,

> "* * * Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for conveyance to them from the well mouth. The compe-itive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monopoly once success has been achieved in a particular field.
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> "These peculiar qualities, moreover, have been reflected in the legal rights relating to the ownership of gas in place, as well as its extraction. They have been adapted to its nature and to that of the competitive struggle regarding it. Only a specialist in this branch of the law which varies from state to state, can undertake to say with any reliable degree of precision what rights may be in particular situations. These difficulties intensified by the competitive struggle for the product and the inadequacy of common-law ideas to control it, have forced both the states and the federal government to adopt extensive regulatory measures in recent years. This has been necessary both to conserve

> the public interest in this rapidly depleting natural resource and to secure fair adjustment of private rights in the industry. Rather than being a sacred untouchable enclave of the common law, the field by its very nature lends itself especially to governmental intervention for such purposes. . . ."

It is readily conceivable that in the course of development of a particular gas field, the ownership of producing and marketing facilities might become such, or be so combined, as to permit monopolistic practices. Under the circumstances prices for gas might be established having no relation to the market value of gas prevailing throughout the natural gas industry and in other fields of commensurate development costs, and having no relation to the market value of other natural resources and products in competitive usage. On the other hand, a like result might obtain from economic warfare between competing producers and marketers. Under either of such circumstances prices might be so reduced that landowners or royalty holders or particular leaseholders would have their interests in the gas exhausted, dissipated and taken, without having received any reasonable compensation, and each suffer waste of a valuable reversion.

Likewise the taking of gas under such circumstances would be inimical to the public interest. Like other natural resource, the subject of private ownership and exploitation, natural gas is a taxable resource. The tax is applied to the gross production and finally measured by the market value or price of the thing produced or reduced to personal possession. The taking of gas from a field, when the taking price of the gas is substantially lower than the price prevailing in other gas fields having commensurate production costs, and at prices having no relation to the market value of other of the natural resources of competitive usage, leads to an exhaustion of such gas without it having borne its fair share of taxation.

Natural gas being exhaustible and of various valuable usage, the public interest extends to its conservation. Undoubtedly the price at which gas may be obtained has an

influence upon the ultimate purpose for which gas may be taken and used, and when the price for gas is substantially lower than its intrinsic value or lower than the market price of products of similar usage, a wasteful use of the gas is apt to occur.

The relationship of price to conservation is suggested in the following expression from the concluding paragraph of the opinion in Quinton Relief Oil & Gas Co. v. Corporation Commission, 101 Okla. 164, 224 Pac. 156:

> "* * * Natural gas has twice the heating units of artificial gas, and taking into consideration the convenience of natural gas, it is intrinsically worth more than artificial gas; its market value being from $2 to $3 per 1,000 cubic feet. The amount of carbon black produced from 1,000 cubic feet of natural gas has a market value of about 10 cents. It, therefore, is obvious that the state, in the proper exercise of its police power and in conservation of so valuable a natural resource as natural gas, may prohibit the wasteful utilization of the same in the interest of the public welfare."

The impelling reason for or cause of discrimination in the taking of gas from one source of supply as against another, and the dilemma of the landowner growing out of private contract for the sale of gas without his interest being represented, is suggested in the following expression found in Oklahoma Natural Gas Corp. v. State et al., 161 Okla. 104, 17 P. 2d 488:

> "It would be a very efficient scheme to circumvent the proration law for a purchaser of gas operating by pipeline, which it has to have in order to successfully handle gas, to take more gas in one place on a low cost than a rival operating on a higher purchase cost depending on contract, and by a system of reciprocity, allow its competitor in another pool to take more on the cheap rate. Thus it would be to the advantage of the friendly pipelines, and very much to the disadvantage of the unsuspecting landowner. Hence the necessity for putting somwhere the power to get a check

upon this and as far as possible prevent it and equalize."

We are of the opinion that such considerations as above discussed occupied the legislative mind and motivated the enactment of the 1915 Act. In the 1915 Act the grant of power to the Corporation Commission to regulate the taking of natural gas from any source of supply, so as to protect the interest of all those having a right to produce therefrom, by necessary implication, includes the power to fix a minimum price on the gas as a condition of the taking, when found reasonably necessary to the accomplishment of that purpose. Likewise the grant of power to regulate, with directions that such power be exercised so as to prevent waste and protect the interest of the public, necessarily implies a power to fix prices as a condition of the taking of gas when otherwise, and because of prevailing prices, the public interest might suffer.

It is well settled that the State in exercise of its police power may regulate the taking of natural gas in the protection of the public interest and in preservation of private correlative rights. Quinton Relief Oil & Gas Co. v. Corp. Comm. supra; Patterson v. Stanolind Oil & Gas Co. 182 Okla. 155, 77 Pac. 2d. 83 and Republic Natural Gas Co. v. State, supra.

Such policy of the law making body of the State is expressed in the 1915 Act. In the nature of the subject matter the Legislature was compelled to leave to another agency of the State the duty of bringing about the result pointed out by the statute. As has been noted, under section 239, supra, the Commission is charged with the duty of regulating the taking of gas from a common source of supply. The standard to guide the Commission in acting thereunder is the prevention of waste, the protection of the interest of the public, and the protection of the interest of all those having a right to produce from such common source of supply. There is no invalid delegation of power by reason of uncertainty in the stated criterion and the Act does not confer arbitrary and uncontrolled powers. The price fixing feature of the Commission's order is but a

means of securing the purpose for which the Act was passed, or is the instrumentality employed by the Commission to carry out the legislative will and it is limited in its use to the effecting of the expressed purpose. The validity of the order rests in its reasonableness and relevancy to the policy the Legislature was free to adopt.

As was stated in Nebbie v. New York, 291 U. S. 502, 78 L. Ed. 940:

> "Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty."

See Herrin v. Arnold, 183 Okla. 392, 82 P. 2d 977.

The Commission had before it the sworn testimony of persons who stated they were engineers of long experience in the production an marketing of natural gas. These witnesses gave testimony to the effect that studies had been made of the character of the natural gas in the Guymon-Hugoton Field, and that studies had been made of the intrinsic value of natural gas or the value of gas as compared to the market value of other fuels in the relation to the heat units each would produce. With these factors considered, it was stated that the commercial heat value of the gas in the Guymon-Hugoton Field, tested with consideration to its delivery and sale at a certain central point of commercial usage, and with subtraction of nominal transportation costs to such central point of commercial usage, is in excess of 10¢ per 1000 cubic feet. It was stated that large blocks of acreage in the Guymon-Hugoton Field are under lease to a comparatively few companies who own the only pipe line outlets from the field, and that competition in the price of gas is not an element in the taking of gas in the field; that the gas is being taken from the field at prices at the wellhead ranging from 3.6¢ to 5¢ per 1000 cubic feet measured on a basis of 2 pounds pressure per square *square* inch above atmospheric pressure; that gas is being taken from the field and sold away from the field under unit of

measurement of less than 2 pounds above atmospheric pressure. Various opinions were expressed by these witnesses who related long records of experience in the gas industry. It was stated that taking of gas from the field at prices of 3.6¢ to 5¢ per 1000 cubic feet constituted economic waste and that such prices were conductive of physical waste and that to prevent economic and physical waste the minimum price for gas in the field should be 10¢ per 1000 cubic feet.

An employee of the State School Land Commission gave testimony to the effect that the State owned 49,600 acres of land located in Texas County, 30,160 acres of which was under lease with 6,099.92 acres being held as producing lease-holds; that the Land Office was receiving royalty from such productions on the basis of 4¢ per 1000 cubic feet for gas at the wellhead, and in some instances on the basis of 5¢ at the wellhead and that one producer from a large acreage was offering to pay 3.34 cents.

The testimony abundantly supports a conclusion that the conditions under which gas is being taken from the field is injurious to the interest of the public at large, and inimical to the interest of a substantial group such as landowners and others and is resulting in economic waste and conductive to physical waste. The testimony demonstrates that the price fixed as a condition of the further taking of gas from the field is reasonable and not beyond the requirements of the situation sought to be corrected, and will not result in discrimination.

The Corporation Commission has heretofore exercised its power of fixing prices at which natural gas may be produced and taken. As early as 1920, after the prescribed notice and hearing, the Commission fixed the price of 9¢ per M. C. F. for gas in the Cushing field. And in 1944, acting specifically in view of the national emergency, the Commission after notice and hearing, authorized the taking of natural gas for the manufacture of carbon black, but fixed the price to be paid for the gas so produced and used. And it was specified that the continued effectiveness of the permit should depend on the maintaining of the fixed price.

In this connection we observe the following demonstra-

tions of a well known rule of construction. In Foot v. Town of Watonga, 37 Okla. 43, 130 Pac. 597, (598) this court said:

> "The construction placed on statutes or constitutional provisions by officers in the discharge of their duties, either at or near the time of the enactment, which has been long acquiesced in, is a just medium for its judicial interpretation."

And in Newblock v. Bowles, 170 Okla. 487, 40 Pac. (2d) 1097, (1101) this court said:

> "In McCain v. State Election Board et al., 144 Okla. 85, 289 Pac. 759, 760, this court said: 'The construction which has been placed upon a statute by the officer or governmental department charged with the carrying out of the provisions of the law is to be accorded due consideration by the courts in construing the statute.' To the same effect is the holding of this court in Leininger et al. v. Ward-Beekman & Brooks, Inc., 139 Okla. 292, 282 Pac. 467; Glasco v. State Election Board et al., 121 Okla. 119, 248 Pac. 642; Foot et al. v. Town of Watonga, 37 Okla. 43, 130 Pac. 597."

And in Washington County v. State Tax Commission, 133 Pac. (2d) 564, (568) this court said:

> "It is a general rule that contemporaneous construction by the department of government specially delegated to carry out a provision of the Constitution raises a strong presumption that such construction, if uniform and long acquiesced in, rightly interprets the provision. * * * While such construction is not conclusive upon the courts, it is entitled to the most respectful consideration. Wells Fargo Co. v. Harrington, 54 Mont. 235, 169 Pac. 463, 466."

See also League v. Town of Taloga, 35 Okla. 277, 125 Pac. 702; Williams v. Continental Construction Company, 168 Okla. 510, 34 P. (2d) 254.

In Great Northern Life Insurance Company v. Read, 136 Fed. (2d) 44, in construing a statute of Oklahoma, the 10th Circuit Court of Appeals said:

> "It is clear, under the Oklahoma statutes, that the license of a foreign insurance company expires on the last day of February next after its issue. Art. XIX of the Oklahoma Constitution and the Oklahoma Statutes, hereinabove referred to permit the construction that the payment of the gross premiums tax on or before the expiration of the license year on the last day of February is exacted for the privilege of doing business in the State during that license year and as a condition precedent to the issuance of a license for the ensuing year. Such has been the uniform and long-continued construction of the executive department charged with the administration of the statutes. The long-continued construction of a statute by a department of the government charged with its execution is entitled to great weight and should not be overturned without cogent reasons. The Legislature of Oklahoma has convened many times during this period of administrative construction without expressing its disapproval. That silence may be regarded as acquiescence in or approval of the administrative construction. Similar statutory provisions have been so construed."

Cities Service contends the order appealed from impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution. In Interstate Natural Gas Company v. Federal Power Commission, 67 S. Ct. 1482, 331 U. S. 682, 91 L. ed 1742, is a case involving the jurisdiction of the Federal Power Commission, we note this expression:

> "In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas

in which the States are constitutionally competent to act.* * * "

"Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interest of conservation or of any other consideration of legitimate local concern."

Here the Corporation Commission has fixed a minimum price for gas in a natural common reservior; such price to be applied at the wellhead as a condition of the taking. The regulation applies to the production of natural gas and though it results in an incidental effect upon the sale price for gas after the gas has been reduced to possession, the subsequent sale of the gas for delivery to another state does not brand the Commission order as a regulation of interstate commerce. The regulation is imposed before any operations of interstate commerce occur. In Parker Director of Agriculture et al. v. Brown, 317, U. S. 341, it is said:

"* * * No case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce."

We do not perceive that the commerce clause of the Federal constitution precludes the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a produced therefrom may have contracted or will contract for sale and delivery of his share of the production outside the state, or because a purchaser from such producer will sell and transport the gas in interstate commerce.

The general order of the Commission fixing the minimum price for gas taken from the field as a part of the order requiring Cities Service to take ratably from the Peerless wells and as applied to Cities Service has the effect of requiring Cities Service to take ratably from Peerless and

pay for the gas so taken at a price equal to the minimum price it must obtain for gas from its own wells offered at the well. If it may be said that under the price fixing order, Cities Service with ownership of pipeline facilities, might take gas from its own wells and after payment of public charges and royalty claims on the gas on a basis of the minimum price fixed by the State, run the gas across the state line and there with profit make disposition of the gas at prices below the minimum fixed by the State, it does not follow that it has a right to use its pipeline facilities to gather gas from other wells on such basis, in otherwise disregard of price regulations, or that it may so use its wells as to effect a drainage from others without liability having relation to the price regulations.

Undisputedly, the production from the Cities Service wells was resulting in drainage of the area where the Peerless wells were located and Cities Service offered to take ratably from the Peerless wells with its taking from its own wells. The effect was an offer to take the gas at the average price prevailing in the field, or on the terms of a "common purchasee" of gas in the field. Cities Service suffered no prejudice to its rights in the fact that the Commission saw fit to investigate field conditions after dispute has arisen growing out of drainage from Peerless wells, or in the fact that a fixed price for gas was established. The order prohibiting Cities Service from taking gas from its wells except that it take ratably from the Peerless wells, insofar as it fixes the price for the gas so taken, is the same as that required of any purchaser of gas from the field. There occurs no greater invasion of Cities Service rights than depriving it of the right to drain gas from beneath the Peerless lease without paying for it. The overall effect of the order is to furnish a practical alternative, consistent with production by both Cities Service and Peerless to protect Peerless from drainage by Cities Service.

We find no basis in the due process and equal protection clauses of the Federal and State Constitution for condemning the orders in their application to Cities Service.

Cities Service complains of certain rulings in reference to certain pleadings filed and complains of the Commis-

sion's conduct and rulings in the course of the various hearings held leading up to the promulgation of the orders here under attack.

The orders are legislative in character and subject in a large measure to the rules and principles by which the validity of statutes are determined. In the hearings preceded the orders, and not for violations thereof, the rules and principles of procedure obtaining in the enactment of a statute more nearly apply than the strict rules applicable to law courts.

We have examined the record and find substantial evidence to support the Commission's findings and no error of law is committed.

Phillips Petroleum Company in application to the Commission to vacate the orders introduced testimony to the effect that it owns oil and gas leases on several thousands of acres of land in the Guymon-Hugoton Field, and several producing gas wells thereon, and was presently taking several millions cubic feet of gas daily from such wells; that Phillips sells no gas produced from said field in the State of Oklahoma, but gathers gas from its wells through its own gathering system to a central point in the State of Texas where it processes the gas and extracts therefrom natural gasoline and other hydrocarbons and sells the residue gas; that it sells such residue gas to Panhandle Eastern Pipe Line Company at 4¢ per 1000 cubic feet; that it has agreed to sell and deliver to Panhandle Eastern all of the gas it produces from 175,000 acres under lease in Texas County, subject to its right to extract natural gasoline and other liquid hydrocarbons from said gas prior to the delivery of such gas to Panhandle Eastern at the said central point in Texas.

Phillips here adopts the brief of Cities Service and with enlargement of argument here presents similar contentions concerning the authority of the Commission to make the orders appealed from and the constitutionality of the orders appealed from.

Our discussion of the Cities Service appeal is here applicable. We find no basis in the due process and equal protection clause of the Federal and State Constitutions for

condemning the orders appealed from in their application to Phillips.

The orders appealed from are affirmed.

Davison, C. J., Arnold, V. C. J., Corn, and Johnson, JJ: concur. Gibson, Luttrell, Halley and O'Neal, JJ: dissent.

Filed In Supreme Court of Oklahoma, Jan. 17, 1950, Andy Payne, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32994

CITIES SERVICE GAS COMPANY, a Corporation, *Plaintiff in Error*

vs.

PEERLESS OIL AND GAS COMPANY, a Corporation, et al., *Defendants in Error*

No. 33006

PHILLIPS PETROLEUM COMPANY, a Corporation, *Plaintiff in Error*

vs.

STATE OF OKLAHOMA, et al., *Defendants in Error*

HALLEY, *J.* (dissenting):

There are two conclusions in the majority opinion in which I cannot concur. I cannot agree that the Corporation Commission has been given authority by the legislature to make a general order fixing the price of gas for an entire gas field or common source of supply. I cannot agree that the Commission has the authority to require Cities Service to pay Peerless a price for gas produced in the Guymon-Hugoton field, substantially above the current market price prevailing in that field. It is admitted that if the general price fixing order for the entire field is authorized, then the price ordered paid to Peerless would

necessarily follow the general price for the entire field. However, it is my view that the general price fixing order is not within the powers granted to the Corporation Commission, and that Cities Service should only be required to pay Peerless the current market price prevailing in that field.

The majority opinion does not claim that general price fixing authority for a common source of supply has been expressly granted to the Commission. It does conclude that such authority is necessarily implied as a means of carrying out the express powers given the Commission to regulate the production of gas, the prevention of waste, the protection of co-equal rights, and the interests of the state and its citizens. These are all worthy objectives. The conservation of a great natural resource challenges the best efforts of all, but does not warrant the Corporation Commission in exercising powers not delegated to it by the Oklahoma Legislature.

The statutes granting authority to the Corporation Commission to regulate the production of gas are generally referred to as the Acts of 1913 and 1915. The applicable portion of the 1913 Act, Ch. 198, page 440, Sec. 3 (Sec. 233, Title 52, O. S. 1941) is as follows:

> "Any person, firm, or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree, at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

In 1915 the following Act, being Ch. 197, Sec. 5 (Sec. 240, Title 52, O. S. 1914) was enacted:

> "Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling

natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have the authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade."

Sec. 2, Ch. 197, Session Laws of 1915 (Sec. 237, Title 52, O.S. 1941) defines the term "waste" as follows:

". . . That the term 'waste, as used herein, in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn, and the wast-ful utilization of such gas."

The foregoing definition of waste was enlarged by the Legislature in 1933 and in 1935, and the term "wasteful utilization" was changed to "inefficient utilization."

It is a cardinal rule of statutory construction that the primary aim is to arrive at the intention of the Legislature. The ancient rule was announced in U. S. v. Temple, 105 U. S. 97, 26 L. ed. 967, in the following words:

> "Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction, for the purpose of either limiting or extending its operation. When the language is plain, we have no right to insert words or phrases so as to incorporate in the statute a new and distinct provision."

Again in Russett School District No. C-8 v. Askew, 193 Okla. 102, 141 P. 2d 575, this court stated in the body of the opinion:

> "As has often been said, the cardinal rule in such cases is to ascertain and give effect to the legislative intention. That intention is to be first sought in the language of the statute itself, and if it is there plainly expressed, it must be followed without further inquiry."

The majority opinion correctly states the rule of construction to the effect that where an officer or government agency charged with the duty of administering a law construes the law and such construction is acquiesed in for a long period of time, such construction should be given great weight by the courts when called upon to construe such law. However, I am unable to agree that the record before us discloses that the Corporation Commission, charged with the duty of administering the law relating to the production of gas, has construed the regulatory Acts as giving it the authority to fix the price of gas produced from a reservoir, except where seller and buyer fail to agree upon a price, or that such construction has been long acquiesced in.

During the more than thirty years that the Commission has been charged with the authority to regulate the production of gas, there is shown only a single instance where it fixed the price of gas for a field or common source of supply. In 1920 the Oklahoma Natural Gas Co. was taking gas from the Cushing Field in Creek County at 6¢ per MCF, and selling it to consumers. The producers were threatening to disconnect their wells. They appealed to the Commission to fix a higher price. The Commission entered an order fixing the price for the entire Cushing field at 10¢ per MCF. This order was not appealed from, and it is not shown how long it was effective. There had evidently been a previous agreement as to price. It was not shown whether all, or what percent, of the producers joined in the application to the Commission.

In 1924 the Commission entered an order prohibiting the use of gas for the manufacture of carbon black. The order was appealed from to this court, which affirmed the order on the ground that the use complained of was a "wasteful utilization" of gas. The case is reported as Quinton Relief Oil & Gas Co. v. Commission, 101 Okla. 164, 224 P. 156. The court held that Ch. 197, Session Laws of 1915, conferring upon the Commission the power to make rules and regulations to prevent the "wasteful utilization" of natural gas, also gave that body the power to define what uses are within the scope of that term.

In 1937, in the Application of Jackson, 179 Okla. 577, 66 P. 2d 1101, this court upheld an order authorizing the use of gas for the manufacture of carbon black as not being a "wasteful utilization". Reference is made to the Quinton case above, where such use was held to be wasteful, and it is held that if the Commission could determine what is "wasteful utilization", it could also determine what use is not wasteful.

In 1944, the War Production Board requested the Commission to enter an order granting authority to use natural gas for the manufacture of carbon black in the Guymon-Hugoton field. The order was issued and the price to be paid fixed at 5¢ per MCF, being approximately the market

price in the field. The order was not appealed from. It was an emergency war order.

The above record does not support the claim that the Corporation Commision has construed the statutes mentioned as giving it the power to fix the price of gas for an entire field. During the years these statutes have been in effect, most of the major gas fields of Oklahoma have been discovered and developed. I agree that "implied powers" flow from a grant of express powers, and that they are those powers necessary or incidental to the exercise of the express powers. The power to fox prices is a drastic one. In H. F. Wilcox Oil & Gas Co. v. Walker, 169 Okla. 33, 32 P. 2d 1044, this court announces the rule relative to implied powers as follows:

> "It is well established that the authority of the Commission is definitely limited to the power expressly or by necessary implication granted to it by the Constitution and the statutes."

That case involved the proration of oil, but the same principle is applicable to the authority of the Commission with respect to gas.

The majority opinion quotes extensively from the dissenting opinion by Justice Rutledge in the case of Republic Natural Gas Co. v. State, et al., 334 U. S. 62, 92 L. ed. 1212. However reasonable and persuasive that dissenting opinion, concurred in by three other members of the court, may be, it is not the law.

If it had been the intention of our legislature to grant to the Commission the power to fix the price of gas at the well-head for an entire field, the addition or inclusion of a few simple words in the statutes granting regulatory authority to the Commission would have settled the matter beyond doubt. Why did the Legislature expressly grant authority to fix the price of gas where seller and buyer fail to agree, and fail completely to grant such authority in the vastly wider and more important field of fixing the price over an entire field or common source of supply? It is incredible that the legislature would expressly grant such authority in a narrow field and leave it to be implied in a vastly wider

and more important area. A gas field, or common source of supply, is the basic unit to which conservation orders are generally applicable. The order of the Commission, which is approved by the majority opinion, means that the Commission may fix the price of gas in every field in the state. The production of oil is under the jurisdiction of the Commission under similar statutes authorizing the prevention of waste, the protection of co-equal rights, and conservation, yet the Commission has never asserted that it had the power to fix the price of oil. It is true that oil may be stored and transported in various ways, while gas cannot be stored and must be transported by pipeline.

It is not my view that conditions do not exist or may not hereafter arise in the Guymon-Hugoton field which may justify drastic regulatory measures by the Commission. The producers who have no pipeline facilities are wholly dependent upon those who have such outlets. These facts have prompted the legislature to give the Commission express powers to prohibit discrimination and to protect the interests of all parties. The land owner is especially interested because he cannot receive, store or distribute his share of the gas produced from his land, but is dependent upon the limited number of purchasers in the field. It may be that the royalty owners are not receiving their proper share of the proceeds of gas produced and marketed from their land. If they are not receiving their just shares under the terms of their lease contracts, they should seek relief in the courts and not before the Corporation Commission. It may be that gas is selling at a price lower than its intrinsic value, but this does not justify the Commission in fixing the price until the legislature has given it such power by clear and unmistakable terms, or by necessary implication.

The evidence shows that no physical waste is being practiced in the Guymon-Hugoton field. The only venting of gas is in the drilling and completion of wells, which is expressly allowed by statute. There is no claim of wasteful utilization. The gas is being sold for fuel, light, or power—all useful purposes.

The evidence as to the effect of price fixing to prevent economic waste is too vague and nebulous to justify serious consideration. It is based largely upon the comparative values of competitive fuels, such as coal and oil, and if followed in the Guymon-Hugoton field, the price of gas there would be so high that producers could not possibly compete with gas produced from other fields in Oklahoma, or in other states; and if the order of the Corporation Commission is made effective, there might result a forced shut-down of the entire field, depriving the state and its interested citizens of their right to compete in the open market in disposing of their gas.

The price fixed by the Commission, where seller and buyer are unable to agree upon a price, should be the current market price prevailing in the field. Any other price would be unfair, discriminatory, and inequitable.

If the legislature had intended to give the Corporation Commission authority to fix the price of natural gas in every gas field in the state, such authority would have been expressly given. Failure to express such intention is proof that no such intention existed. To read into the statutes such drastic power is nothing short of legislation by judicial construction, and for the fore-going reasons I respectfully dissent.

CITIES SERVICE GAS CO. v. PEERLESS OIL & GAS CO.

PHILLIPS PETROLEUM CO. v. STATE et al.

Nos. 32994, 33006. March 6, 1950

(Original Opinion Filed Jan. 17, 1950

GIBSON, J. (dissenting). Apart from what has been stated in Justice Halley's dissenting opinion and from other considerations upon which error in the holding of the majority opinion might be grounded, I am of the opinion the following considerations clearly demonstrate that the statement in the opinion that the Corporation Commission has authority to fix the price at which natural gas may be produced and taken from the field is not only without authority

in law but is judicial legislation and that too in the face of a legislative enactment to the contrary.

The private ownership of the gas is recognized and the right of sale as an incident of ownership obtains under and is protected by the Constitution until qualified under proper authority. The Corporation Commission is without power to invade the right of the owner to sell and of the purchaser to buy except to the extent the right so to do is granted by the Legislature under authority of the Constitution.

In 1913 (S. L. 1913, ch. 198, sec. 3) such right, subject to limitations, was granted as follows:

"Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

This section has been carried forward in the 1921, 1931 and 1941 statutes, and now appears as Tit. 52 O. S. 1941 § 233.

The conclusion of the court that the Commission has plenary authority to fix the price of gas in the field is implied from the provisions of S. L. 1915, ch. 197, § 4, which is as follows:

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportions of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears

to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another."

This section, together with other provisions of the 1915 Act, was also carried forward in the 1921, 1931 and 1941 statutes, and the same now appears as Tit. 52 O. S. 1941 § 239.

That under such circumstances the quoted statutes are in pari materia there can be no question. And such fact has been expressly declared by this court in Republic Natural Gas Co. v. State, 198 Okla. 350, 180 P. 2d 1009, (app. dismissed 68 S. Ct. 972, 334 U. S. 62, 92 L. Ed. 1212) wherein there is said:

"It is also significant that both the 1913 Act and the 1915 Act were brought forward in the 1921 Statutes, and 1931 Statutes, and the 1941 Statutes, so that it is apparent that the Legislature in adopting the 1941 Statutes did not consider the 1913 Law superseded by the 1915 law."

The established rule of construction in such situation is to treat the sections as parts of one law. The rule is thus stated in 59 C. J. 1043, § 620:

". . . It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection

with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another."

This rule has been repeatedly recognized and applied by this court. Ratliff *v.* Fleener, 43 Okla. 652, 143 P. 1051, 1052; Jefferson *v.* Cook, 53 Okla. 272, 155 P. 852, 855. We there expressly held the acts relating to the subject should be read together as constituting "one law."

The fundamental rule of construction is the determination of the intent of the Legislature that is embodied in the law. And the same is to be ascertained primarily from the language used in the statute and where the language of the statute is plain and unambiguous there is no occasion for construction. McCain *v.* State Election Board, 144 Okla. 85, 289 P. 759, 761. (See, also, text and cases cited thereto in 59 C. J. 952, § 569). In such situation, where the meaning of the language is plain, it *must* be given effect by the courts. Osage County Motor Co. *v.* Pappin, 139 Okla. 23 P. 217; Pasley *v.* Union Nat. Bank of Bartlesville, 137 Okla. 171, 278 P. 621. (See further text and cases cited 59 C. J. p. 955). Another pertinent rule is where statutes are in pari materia they should so far as possible be construed as in harmony with each other. State et al *v.* State ex rel. Shull, State Bank Com'r, 142 Okla. 293, 286 P. 891.

Now, consider the two sections of the one law in the light of these rules.

Section 233 deals specifically with the extent of the power to fix prices that may be exercised by the Commission. This power is not plenary and the very idea that it may be so considered is expressly negatived by the requirement of conditions to the exercise thereof. Section 239 does not even purport to deal with the definition of Commission's power. But even if it can be construed as involving the exercise of price-fixing power, it can be none other than that which is provided for in section 233, to be exercised under the conditions therein prescribed. To hold otherwise is not only to fail to harmonize the two provisions, but is to ignore a legislative intent which is expressly and plainly declared in the law being construed?

I consider the effect of the holding of the majority to be even more serious than a distortion of the legislative intent, because to the extent it recognizes in the Commission a power in excess of the limitation imposed by the Legislature, it involves an impairment of property rights.

If the better enforcement of the law requires that the Corporation Commission be clothed with more power than that expressly granted in the law, such fact is a challenge to further legislative action to be taken with due regard to constitutional limitations. Such need can afford no justification for this court to invest the Commission with the power by judicial fiat.

APPENDIX "B"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause C. D. No. 1054
Order No. 19514

PEERLESS OIL AND GAS COMPANY, a Corporation, *Applicant*,

versus

CITIES SERVICE GAS COMPANY, a corporation, and all OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, *Respondents*,

THE SCHOOL LAND COMMISSION OF THE STATE OF OKLAHOMA AND TEXAS COUNTY LAND & ROYALTY OWNERS ASSOCIATION, *Interveners*

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma on the 26th day of November, 1945, at 10:00 o'clock, a.m. on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land

Commission of the State of Oklahoma and the Texas County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent, Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

Findings

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas County, Oklahoma covers part of the following described townships, to-wit:

Townships:	Ranges:
1 North	12 to 17 E.C.M.
1, 2, 3, and 4 North	12 to 18 E.C.M.
and	
5, and 6 North	12 to 19 E.C.M.

which area may be extended by the drilling of additional wells.

5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases include leases covering:

Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, and
Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrer of natural gas.

14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas

from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton, Oklahoma, gas field, one of which said pipe lines is in close proximity of said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of Oklahoma Natural Gas Company v. State, 161 Okla. 104, 17 Pac. (2d) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation, and respondent, Cities Service Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply, in Sections 5 and 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Sections 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton Pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate 4¢ per thousand cubic feet of natural gas at the wellhead, plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic feet delivered into the pipe lines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so

fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon-Hugoton, Oklahoma, gas field own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton, Oklahoma, gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

24. There is no competitive market of natural gas in the Guymon-Hugoton, Oklahoma, oil field, but said market has been shifted by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton, Oklahoma, gas field at a price for less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas is being taken out of the Guymon-Hugoton, Oklahoma, field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers under contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton, Oklahoma, gas field under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract

with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company, constitute a common carrier.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

32. The taking of natural gas from the Guymon-Hugoton, Oklahoma, field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: Natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

34. For the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery

of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations of the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

Done and performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman,*
RAY O. WEEMS, *Vice-Chairman,*
WM. J. ARMSTRONG, *Commissioner.*

Attest:
TOM MCMURRAY, *Secretary.*

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No. 73

Supreme Court of the United States

OCTOBER TERM, 1950

PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

VERSUS

THE STATE OF OKLAHOMA, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, a corporation, COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, and CITIES SERVICE GAS COMPANY, a corporation,
Appellees.

RESPONSE TO MOTION OF APPELLEES TO DISMISS

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October, 1950

UTTERBACK TYPESETTING CO., 18 SOUTH WALKER, OKLAHOMA CITY, OKLA., PH. 3-8750

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RESPONSE TO MOTION OF APPELLEES TO DISMISS

Appellees move to dismiss this appeal on the ground that the record does not show that appellant, Phillips Petroleum Company, "is or will be injured or affected" by the order appealed from and therefore has no standing to question the correctness of the decision of the Oklahoma Supreme Court upholding the same. The authorities cited by appellees merely state the general rule that the validity of a statute or other legislative enactment may not be attacked as being unconstitutional by a party "whose rights are not affected by it," or against whom "it is not being or is not about to be applied to his disadvantage," or who "is not injured thereby," or is "not in the class

affected," or who suffers injury only "in some indefinite way in common with people generally." Appellant takes no issue with such statements of the general rule.

Appellant does not come within the rule. This case does not come within the rule.

Order No. 19514 of the Oklahoma Corporation Commission complained of in this case (R. 11, 18) provides:

"ORDER

"It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

"1. That no natural gas shall be taken out of the producing structures or formations of the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"2. This order shall be effective as of January 1st, 1947.

"Done and Performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946."

The Act pursuant to which the order was made provides for severe penalties for its violation.

The Supreme Court of Oklahoma in the judgment appealed from (R. 895, 914, 220 Pac. [2d] 279, 290) said, "The regulation applies to the production of natural gas."

It is not questioned that appellant is an owner and producer of gas in the Guymon-Hugoton Field to which

the order applies. This is acknowledged in the motion to dismiss. The Corporation Commission so found (R. 854).

Thus presented is a situation where an owner and producer of gas, otherwise free to produce, sell and dispose of such gas at such price and on whatever terms it sees fit, is expressly prohibited from so doing except upon the terms named in the order.

It is elementary that the right of an owner to possess, manage, use and dispose of its property, together with the right to fix the price and terms of sale, is an inherent right of property subject to the protection of the XIV Amendment to the United States Constitution. *Buchanan* v. *Warley*, 245 U. S. 60, 74; *Tyson & Bro.* v. *Blanton*, 273 U. S. 418, 429; *Washington ex rel. Seattle Title & Trust Co.* v. *Roberge*, 278 U. S. 116; 11 Am. Jur. 1146, Sec. 335; 16 C. J. S. 1196, Sec. 599.

The order in question directly and presently, day by day, takes from and deprives appellant of such vested property right. Appellant is in the class to whom the order applies. The order has continuing application and purports to be self-executing.

The fact that the Supreme Court of Oklahoma has assumed jurisdiction and passed on the constitutional questions involved herein is tantamount to a holding that the appeal was proper and that appellant had sufficient interest to maintain the same. Where under such circumstances the Supreme Court of the state actually considers and passes upon the question raised as to the validity of a state statute or legislative order upon grounds of its repugnancy to the United States Constitution and decides in favor of its validity, this Court has jurisdiction on appeal.

and will not inquire how and when the constitutional question was raised. *Charleston Federal Savings & Loan Association* v. *Alderson*, 324 U. S. 182, 185; *Chicago, Rock Island & Pacific Railway Co.* v. *Daniel J. Perry*, 259 U. S. 548, 551; *Nickey* v. *Mississippi*, 292 U. S. 393; *Whitfield* v. *Ohio*, 297 U. S. 431, 435.

The foregoing rule and the authorities cited thereunder constitute a complete answer to appellees' motion to dismiss. Nevertheless, if there may be ignored the necessary result of the decision of the Supreme Court of Oklahoma to the effect that appellant was so affected by the order as to entitle it to assert its constitutional rights, the record in this case shows that contrary to appellees' position appellant was so affected.

The appellees rely on parts of the following findings by the Corporation Commission in its Order No. 19702 dated February 4, 1947, denying appellant's application to vacate Order No. 19514, to the effect that appellant was at the time realizing the "equivalent of approximately 7¢ per thousand cubic feet" for its gas at the wellhead and because thereof say, as did the Corporation Commission, that appellant is not injured.

For more convenient reference we quote in their entirety the findings so referred to (R. 854, 856. Emphasis is ours):

> "4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which *price was applicable to all producers*, purchasers and takers of gas in the field; that the applicant herein, Phillips

Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price *presently* in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26.70 gasoline which has a *current* market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, *is now* realizing from the natural gas produced in the Guymon-Hugoton Field, the *equivalent of approximately* 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton Field and since the applicantion filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

"5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

* * * * * * *

"7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is *presently* realizing *approximately* that amount *at this time.*"

The order of the Commission was as follows (R. 856):

"ORDER

"It is therefore ordered by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19515 here-

tofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

"Done and Performed this the 4th day of February, 1947."

Appellees then say, "The orders thus clarified and interpreted give appellant no ground of complaint. Its operations are not affected by them."

Let us assume for the moment that such findings, instead of saying that appellant was at that time realizing the "equivalent of approximately 7¢ per thousand cubic feet" for its gas, it was a fact and the Commission had found that appellant was in reality being paid at that time the full price of "7¢" or more per thousand cubic feet at the wellhead in express compliance with Order No. 19514. Even such a fact and finding would not relieve Order No. 19514 of its direct and objectionable effect upon appellant. It would still remain an ever-present restriction and deny to appellant its right to at any other time utilize, sell or otherwise dispose of all or any part of its gas for any other purpose or under circumstances that would yield to it a lesser price. The order is a continuing order and is not limited to the time of hearing appellant's motion to vacate. The record shows and the findings of the Commission so indicate that the amount realized by appellant for its gas was not a fixed amount over a continuing long period of time but was subject to change at any time and from time to time based on a number of variables. For example, the Commission found that at the time of its order appellant was "presently" being paid 4.67¢ per

thousand cubic feet by Panhandle Eastern Pipe Line Company for the residue gas. The record shows that the contract price was only 4¢ (R. 880) and that the additional .67¢ was due to a requested enrichment of the gas by Panhandle Eastern Pipe Line Company (R. 832, 833, 844, 849, 850) pursuant to a supplemental agreement, which request could be withdrawn at any time (R. 893). As a matter of fact, such request was later withdrawn and the price again became 4¢. A part of the amount so found by the Commission to have been realized by appellant was based on the "current market value" of gasoline of between "5 and 5¼ cents per gallon." The Court knows of its own knowledge that the market value of gasoline fluctuates from time to time. That is the reason the Commission in its findings used the phrase "current market value." It did get as low as "two to three cents" (R. 849). The Commission was careful in its findings to use the qualifying terms "at this time," "is now" and "presently." If on any day or if during any period the amount so realized by appellant for its gas dropped below the price so specified in the order or to the extent that appellant had gas for which it had no market at the prescribed price, appellant would have no alternative under Order No. 19514 other than to shut in its wells.

Furthermore, said findings relate only to the gas then being produced by appellant. The record shows that appellant owned additional gas acreage in the field (R. 826, 827, 870). Mr. F. E. Rice, Vice-President of appellant, testified that he had occasion to seek markets for other gas of appellant in the same area and had made a study and

was familiar with the available markets for such gas (R. 846); that although he had negotiated for the sale of such gas on the best possible terms he had been unable to negotiate a contract nor did he know of a market that would yield to appellant a price therefor of 7¢ per thousand cubic feet at the wellhead (R. 846, 847). Unable to get a market for such other gas at the price prescribed by the Commission, appellant under the order would be forced not to drill for or produce such gas inasmuch as appellant would be prohibited by the order from selling such gas at a lower price.

Not only do the findings in the order denying appellant's motion to vacate fail to relieve Order No. 19514 of its direct and objectionable effect upon appellant but adds to appellant's indeterminable confusion in knowing if and when it is in violation thereof.

Appellant in its assignments of error attacks Order No. 19514 as unconstitutional because of being vague, indefinite and uncertain as applied to a producer, such as appellant, that does not sell and get a "price" for its gas at the wellhead or elsewhere in its natural state (R. 948). This Court in the case of *Connally* v. *General Construction Co.*, 269 U. S. 385, 391, has said:

> "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

Order No. 19514 merely says that no gas shall be taken out of the producing formation "at a price, at the well-

head, of less than 7¢ per thousand cubic feet" measured at a pressure of 14.65 pounds per square inch. The order does not say whether or not a producer in order to produce its gas must sell the same to some purchaser at the wellhead to get such a "price," or if the producer otherwise utilizes its own gas or sells the same elsewhere or under different conditions than at the well, how or by what standard such producer is to determine the value of such use or the proceeds of such sale other than at the wellhead in relation to the prescribed wellhead price. If the findings in such order denying the motion of one of many producers in the field to vacate a general legislative order are sufficient to constitute an effective interpretation of such general order, which we doubt, then of course the interpretation by the Commission that all that is required where the gas is not sold at the wellhead is that the producer should realize "the equivalent of approximately 7¢ per thousand cubic feet at the wellhead" eliminates the first objection with respect to the necessity of an actual wellhead sale, but the finding in regard to the amount realized by appellant for its gas further confuses and makes more indefinite Order No. 19514 as to how and by what standards such "equivalent," "approximate" amount can be determined to in advance avoid violation of the order.

The facts in respect to appellant's disposition of its gas and the amount realized therefore are as follows: Appellant sold none of its gas at the wellhead or elsewhere in the State of Oklahoma (R. 827, 830, 831). Instead it, by means of an extensive pipe line gathering system,

gathered the gas from its wells to a central point in Hansford County, Texas, where it processed the same in a gasoline plant owned and operated by appellant for the extraction of its gasoline and other liquid hydrocarbon content (R. 827, 828, 830, 832). The processed residue gas, less so much thereof as was used for plant fuel, was then dehydrated and delivered to Panhandle Eastern Pipe Line Company under a contract for the life of the leases (R. 827-829, 832, 833). The point of delivery of the residue gas as established under the contract was in Hansford County, Texas, a short distance from the gasoline plant (R. 828). The raw gasoline and other liquid hydrocarbons extracted from the gas, as such, having no commercial value (R. 844), were transported by pipe line another fifty or sixty miles to a "central treater" owned and operated by appellant at Borger, Texas, where by fractionation and other refinement they were broken down into a number of products, principally 26-70 gasoline, butane and propane, some of which were sold and others consumed by appellant in its own operations or used in the manufacture of other products for use or sale (R. 842-844).

It is undisputed that the appellant was being paid at the time of the hearing 4.67¢ per thousand cubic feet for the residue gas measured on a 16.4-pound pressure base (R. 833). The Commission in said order merely found that appellant was receiving a price "of 4.67¢ per thousand cubic feet" without reference to the basis of measurement. It was not disputed and the Commission found that the liquids extracted from each thousand subic feet of gas amounted to .6 of a gallon (R. 842). The Commission in said order found that "the larger percentage of the

liquid hydrocarbons extracted is 26.70 gasoline which has a current value of between 5 and 5¼ cents per gallon." The undisputed evidence was that this "larger percentage" was 46/80ths, having the value per gallon ascribed to it by the Commission (R. 843, 844, 849, 850) and that the remainder was butane and propane, having a value of "two cents per gallon" (R. 849).

An analysis of the figures so found by the Commission, in the light of the details disclosed by the evidence, shows that for each thousand cubic feet of gas measured on a 16.4-pound pressure base, appellant, after gathering, processing and refinement, obtained .352 gallons of 26-70 gasoline of a value of 1.85¢ figured at 5¼¢ per gallon, and 2.84 gallons of butane and propane of a value of .496¢ figured at 2¢ per gallon. Converted to a 14.65-pound pressure base as required by Order No. 19514, the 4.67¢ price received for the residue gas on a 16.4-pound pressure base would amount to 4.17¢ per thousand cubic feet.

Adding these figures together to arrive at the gross proceeds or value realized per thousand cubic feet of gas measured on a 14.65-pound pressure base, after gathering, transportation, processing, refinement, sale, etc., we get the following answer:

Residue gas sales	4.17¢ per MCF
26-70 Gasoline	1.85¢ per MCF
Butane and Propane	.496¢ per MCF
Total	6.516¢ per MCF

Thus the total of 6.516¢ per thousand cubic feet is what the Corporation Commission of Oklahoma found was the "equivalent of approximately 7¢ per thousand

cubic feet at the wellhead, within the terms and meaning of Orders Nos. 19514 and 19515." How it can be said that the *gross* proceeds or value of the residue and refined by-products of the gas amounting to only 6.516¢ per thousand cubic feet without any allowance for cost of gathering, transportation, processing, refinement and sale "is equivalent to approximately 7¢ per thousand cubic feet" for the gas in its natural state at the wellhead within the meaning of Order No. 19514 is without comprehension on our part.

Thus with the fluctuation from time to time of the price received for or the value of the residue gas and by-products going to make up the *gross* amount realized by appellant for its gas and changing economics as related to the cost of gathering, producing, refining and selling such gas and its by-products, appellant is completely at a loss and without means to determine from time to time whether or not it is or is not in violation of the order. This, as said in the case of *Connally* v. *General Construction Co.*, *supra*, "violates the first essential of due process of law."

Appellant is further confused by the use in said findings of the language "approximately 7¢ per thousand cubic feet at the wellhead." Order No. 19514 unequivocally says "7¢". It does not say that anything less than 7¢ will suffice. What is approximate?

Under Order No. 19514 even as interpreted by Order No. 19702 appellant is not permitted to produce and use any of its gas for fuel in its own operations. It would have no way of knowing what value to ascribe to such use of the gas for fuel purposes. The order does not say. Yet the

use by a producer of its own gas for fuel in its own operations is a common and necessary use to which such gas is put.

Appellees urge that appellant cannot rely upon any increased obligation to its royalty owners resulting from Order No. 19514 as an injurious effect entitling it to attack the order because they further say that there is no evidence in the record showing the amount of such royalty obligation and that no basis has been laid therefor. With this we cannot agree. H. W. Long, appearing as witness for the proponents of the order and referring to the whole of the Guymon-Hugoton Field, testified: "These leases which were taken out there and the leases which are in existence now, without, I think, a single exception, provided that the land owner shall receive one-eighth of the market price at the mouth of the well." This evidence was undisputed. Specific reference to such an injury in the assignments of error would not be required inasmuch as it is merely one of many facts and factors supporting the general assignment that the order is arbitrary, unjust and unreasonable.

Appellees in their motion to dismiss do not mention any increased obligation to the State of Oklahoma on account of increased gross production taxes. Title 52, Oklahoma Statutes 1941, 321, levies a gross production tax "equal to five per centum of the gross value of the production of natural gas and/or casinghead gas" produced in the State of Oklahoma.

Thus it will be seen that appellant, a member of the class against which said Order No. 19514 is directed, is

vitally and adversely affected by such order even as interpreted by the order denying appellant's motion to vacate the same.

We respectfully submit that appellee's motion to dismiss herein is not well taken and should be denied.

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Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF OF APPELLANT

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October, 1950

UTTERBACK TYPESETTING CO., 13 SOUTH WALKER, OKLAHOMA CITY, OKLA., PH. 3-8750

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No. 73

Supreme Court of the United States

OCTOBER TERM, 1950

PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

VERSUS

THE STATE OF OKLAHOMA, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, a corporation, COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, and CITIES SERVICE GAS COMPANY, a corporation,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF OF APPELLANT

OPINION BELOW

The opinion of the Supreme Court of Oklahoma is reported in 220 Pac. (2d) 279. It has not as yet been reported in the official Oklahomaa Reports. It appears in the record at pages 895 to 927.

JURISDICTION

The judgment of the Supreme Court of Oklahoma herein appealed from was entered on the 17th day of January, 1950 (R. 895). Petition of Appellant for rehearing (R.

928) was timely filed and was denied March 21, 1950 (R. 944). Petition for appeal to this Court (R. 945) was presented to the Chief Justice of the Supreme Court of Oklahoma and allowed April 7, 1950 (R. 952).

The jurisdiction of this Court rests on 28 U. S. C. 1257 (2),

The Supreme Court of Oklahoma is the highest court of said state. The decision or judgment appealed from is in favor of validity of statutes of the state the validity of which was and is drawn in question on the ground of being repugnant to the XIV Amendment to the Constitution of the United States.

STATUTES INVOLVED

The statutes of the State of Oklahoma the validity of which is involved are as follows:

(a) Order No. 19514 (R. 11) of the Corporation Commission of Oklahoma dated December 9, 1946, which provides:

"ORDER

"It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

"1. That no natural gas shall be taken out of the producing structures or formations of the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"2. This order shall be effective as of January 1st, 1947.

"Done and Performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946."

The Supreme Court of Oklahoma in the judgment appealed from held that said order is "legislative in character" and subject to the rules and principles "by which the validity of statutes are determined 916). A legislative order of a state administrative b ty, such as the Corporation Commission of Oklahoma, is "a statute" of a state within the meaning of the statutes of the United States, giving the Supreme Court jurisdiction on appeal where there is drawn in question "the validity of a statute of any state"; *John P. King Manufacturing Co.* v. *City Council of Augusta*, 277 U. S. 100, 103-114; *Sultan Railway and Timber Co.* v. *Department of Labor and Industries of the State of Washington*, 277 U. S. 135, 136; *Albert W. Hamilton* v. *Regents of the University of California*, 293 U. S. 245, 257-258; *Live Oak Water Users Association* v. *Railroad Commission*, 269 U. S. 354, 356.

(b) Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, Oklahoma Statutes, 1941, insofar and to the extent that said statute is held to authorize said Corporation Commission Order No. 19514. Said act in general authorizes the Corporation Commission of Oklahoma to regulate the production and taking of gas in Oklahoma so as to prevent waste, protect the rights of the public and of those having a right to produce from a common source of supply within the state. The pertinent section held by the Supreme Court of Oklahoma (R. 905-916) to authorize said Order No. 19514 is Section 4, Title 52, O. S. 1941, 239, namely:

"§ 239. *Common source of supply—Excess gas supply—Apportionment and regulation to prevent waste*

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. (Laws 1915, ch. 197, § 4.)"

"Waste" as used in said statute is a term defined by Section 2 thereof, Title 52, O. S. 1941, 237, to mean:

"The term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capa-

ble of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas."

STATEMENT OF CASE

The Guymon-Hugoton Gas Field in Texas County, Oklahoma, is a part of a much larger field which extends not only north and south across all of said county but also into Kansas on the north and Texas on the south (R. 88, 508; see map, Exhibit 68, R. 636A).

The Corporation Commission of Oklahoma by the order complained of prohibits the production from and after January 1, 1947, of any gas from the Oklahoma portion of the field "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute per square inch" (R. 11, 18).

Appellant is a substantial producer of gas in said field. At the time of the hearing herein it owned oil and gas leases on 183,000 acres of land in the Oklahoma portion of the field (R. 826) on which it had drilled 85 wells (R. 827) from which the allowed production of gas under the then orders of the Corporation Commission was 45 million cubic feet per day (R. 827) measured on a 14.65-pound pressure base (R. 831, 832). In addition, it owned leases on many thousands of acres of land in the Texas portion of the field on which it had drilled 110 wells (R. 831) from which it was producing approximately 86 million cubic feet of gas per day measured on a 14.65-pound

pressure base (R. 832). Said leases are more or less concentrated in the most southerly portion of Texas County, Oklahoma, and the northern part of Sherman and Hansford Counties, Texas.

Except for a negligible quantity of gas sold as an accommodation to another producer for the drilling of two wells, Appellant sells none of its gas at the wellhead or elsewhere in the State of Oklahoma (R. 827, 830, 831). As a means of providing itself with a market for the gas from a part of its acreage, Appellant in 1943 made and entered into a contract with Panhandle Eastern Pipe Line Company for the sale to it for the life of Appellant's leases of the residue gas (the gas remaining at the conclusion of gathering and processing for natural gasoline and other liquid hydrocarbons) from gas produced from approximately 115,000 acres of the leases in Oklahoma and approximately 60,000 acres of the leases in Texas after the same has been gathered and processed by Appellant for the extraction of its gasoline and other liquid hydrocarbon content (see original and supplemental contracts, R. 861-894). The contract further provides for the dehydration and other purification of the gas by Appellant (R. 873, 880, 888, 891). For such residue gas Panhandle Eastern Pipe Line Company agreed to pay 4¢ per thousand cubic feet for the first five years after first delivery under the contract, 4½¢ for the next five years, 5¢ for the next five years, with provision (a) for arbitration of the price thereafter if not mutually agreed to, (b) for escalation of the price during any period of abnormal inflation or deflation, and (c) a reduction in price for any gas having a heating value of less than 975 British thermal units

per cubic foot (R. 880, 881). A supplemental contract dated March 18, 1946, provided for an increase in the price if at the request of Panhandle Eastern Pipe Line Company the gas was enriched by Appellant over and above 973 British thermal units per cubic foot (R. 893, 894). All measurements under the contract, including the measurement of volume in respect to price, are on a 16.4-pound pressure base (R. 883).

Pursuant to its contract with Panhandle Eastern Pipe Line Company Appellant by means of an extensive pipe line gathering system gathers the gas from the wells to a central point in Hansford County, Texas, where it is processed in a gasoline plant owned and operated by Appellant for the extraction of its gasoline and other liquid hydrocarbon content (R. 827, 828, 830, 832). The residue gas, less so much thereof as is used for plant fuel, is then dehydrated and delivered to Panhandle Eastern Pipe Line Company under its contract (R. 827-829, 832, 833). The point of such delivery as established under the contract is in Hansford County, Texas, a short distance from the gasoline plant (R. 828). First delivery under the contract was made November 18, 1944 (R. 833). The raw gasoline and other liquid hydrocarbons extracted from the gas, as such, have no market value (R. 844), but are transported by pipe line another fifty or sixty miles to a "central treater" owned and operated by Appellant at Borger, Texas, where by fractionation and other refinement they are broken down into a number of products, principally 26-70 gasoline, butane and propane, some of which are sold and others consumed by Appellant in its

own operations or used in the manufacture by it of other products for use or sale (R. 842-844).

Under the undisputed evidence the value or gross proceeds of such residue gas and liquid products, without any allowance for the cost of gathering, processing, dehydrating, refining, sale or other handling thereof, at the time of the hearing herein was less than the price required by Order No. 19514 to be obtained for the gas in its natural state at the wellhead.

What has thus far been said pertains to Appellant's gas acreage covered by the Panhandle Eastern Pipe Line Company contract. Appellant owns leases on approximately 68,000 additional acres of land in the Oklahoma portion of the field not covered by contract at the time of the hearing.

Mr. F. E. Rice, Vice-President of Appellant, testified that he had occasion to seek markets for other gas of Appellant in the same area and had made a study and was familiar with the available markets for such gas (R. 846); that although he had negotiated for the sale of such gas on the best possible terms he had been unable to negotiate a contract nor did he know of a market that would yield to Appellant a price therefor of 7¢ per thousand cubic feet at the wellhead (R. 846, 847); that to make delivery of its gas to Cities Service Gas Company would require the relaying and reversal of flow of its gathering system at a cost of at least one million dollars (R. 847); that the facilities of Cities Service Gas Company were already loaded and running at capacity. As shown on Exhibit 68 (R. 636A) the lines of Cities Service Gas Com-

pany are in the north half of Texas County, Oklahoma, several miles distant from the acreage of Appellant.

The proceeding before the Corporation Commission of Oklahoma that resulted in said Order No. 19514 originated with the filing of an application by Appellee, Peerless Oil and Gas Company, a producer in another part of the Guymon-Hugoton Field far removed from the leases of Appellant, as sole applicant, against Appellee, Cities Service Gas Company, both a producer and common purchaser of gas, as sole respondent, to require said respondent as a common purchaser to take and purchase gas from Applicant's wells ratably with other wells to which the respondent was connected at a price to be fixed by the Commission and asking that "In fixing the price of said natural gas" the Commission "fix *the price to be paid by all purchasers* in the field" (R. 31, 34, emphasis supplied). During the course of the proceeding the Appellee, Commissioners of the Land Office of the State of Oklahoma, owner of land in the field, intervened on the side of the Applicant, asking "that said rate and price be fixed as 'in the sands and in the common reservoir before being removed' in order to circumvent wanton economic waste" (R. 171, 177).

Although it had notice of the filing of said application and of said petition of intervention, Appellant not being either a seller or a purchaser of gas in the field, having no dispute or problem with anyone regarding the sale, purchase or price of its or anyone else's gas, the amount of the allowed production from its wells being fixed by other orders of the Corporation Commission (Order No.

17867, R. 535, and the monthly allowable orders issued pursuant thereto), and no question ever having been raised regarding its taking and use of its own gas, did not consider itself involved and did not in any way take part in the hearing or other proceedings before the Commission leading up to Order No. 19514. As further disclosed by the record, no other producer, except the Applicant, Peerless Oil and Gas Company, and the Respondent, Cities Service Gas Company, and no other purchaser, except the Respondent, Cities Service Gas Company, appeared or took any part in such proceeding.

As a result of such proceedings the Corporation Commission concurrently made two orders: one, Order No. 19515 (R. 19), directed against Cities Service Gas Company requiring it as a common purchaser to take gas from the wells of applicant, Peerless Oil and Gas Company, ratably with other wells to which such purchaser was connected and fixing the price to be paid therefor; the other, Order No. 19514 (R. 11), not directed against purchasers but against producers generally, prohibiting the production of gas "at a price, at the wellhead, less" than that prescribed by the order.

Although Order No. 19515 in part contains the same objectionable language as does Order No. 19514, yet the Commission in its brief in the court below having made it clear and the Supreme Court having determined that said Order No. 19515 was in fact an order applicable only as between Peerless Oil and Gas Company and Cities Service Gas Company and not a general order, separate con-

sideration thereof is not material to Appellant's appeal to this Court.

Appellant's first appearance in the proceeding was by application filed with the Corporation Commission on January 17, 1947, to vacate said Orders Nos. 19514 and 19515 insofar as applicable to Appellant or, in the event of refusal to so vacate the same, to clarify such orders as applied to gas not sold at the wellhead, which application was entertained and denied by the Commission on February 4, 1947 (R. 853).

The Corporation Commission in avoiding the setting aside or modifying of its orders made a finding (a) "that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement base provided for in said order, if same were sold, but if not sold, that said gas should be utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead on the pressure bases provided for in Orders Nos. 19514 and 19515" and the Appellant *was then* realizing "the equivalent *OF APPROXIMATELY* 7¢ per thousand cubic feet at the wellhead within the meaning of Orders Nos. 19514 and 19515"; and that (b) therefore "applicant is already complying with Orders Nos. 19514 and 19515" (R. 855, emphasis supplied). The Commission made no formal order modifying said Orders Nos. 19514 and 19515 to conform with its interpretation thereof but by its order simply denies Appellant's "application to vacate" (R. 856, 857).

Appeals were thereupon taken by Appellant direct to the Supreme Court of Oklahoma both from the original Orders Nos. 19514 and 19515 (R. 7, 804) and from the order of the Commission denying Appellant's motion to vacate said Orders Nos. 19514 and 19515 (R. 804), the first such appeal (R. 7) being by way of cross-petition in error in an appeal taken by Cities Service Gas Company from said Orders Nos. 19514 and 19515 (R. 1). The appeals so taken, together with that of Cities Service Gas Company, were consolidated by the Supreme Court of Oklahoma (R. 29) and the one opinion and judgment entered therein sustaining the orders appealed from.

Appellant now appeals to this Court from said judgment of the Supreme Court of Oklahoma on the ground that the orders so held to be valid by the Supreme Court of Oklahoma are repugnant to and violate the XIV Amendment to the Constitution of the United States.

Cities Service Gas Company has taken its separate appeal to this Court in the case of *Cities Service Gas Company* v. *Peerless Oil and Gas Company*, No. 153, October Term, 1950.

The further facts in regard to the arbitrary, unreasonable and confiscatory nature of said Order No. 19514, that it has no reasonable relationship to the object of its enactment, goes beyond the demands of the occasion and imposes unreasonable and unnecessary restrictions upon the business and property of Appellant, can more clearly and best be stated in connection with Point II of the Argument which follows and which deals with such sub-

ject, and to avoid needless repetition have not been detailed in this statement of case.

SPECIFICATION OF ERRORS INTENDED TO BE URGED

1. The Supreme Court of Oklahoma erred in failing to hold that Order No. 19514 of the Corporation Commission of Oklahoma appealed from in said consolidated cases and affirmed by the judgment therein, as applied to Appellant, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, that does not sell its gas at the wellhead but gathers, processes and elsewhere sells or usefully utilizes the same, deprives Appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because of being vague, indefinite and uncertain in that it wholly fails to provide, first, whether such a producer is permitted under the order to so gather, process and elsewhere than at the wellhead sell or otherwise utilize its own gas or whether it must sell the same in its natural state to others "at the wellhead" in order to get the prescribed "price at the wellhead", or second, if such taking and utilization by Appellant of its own gas is permitted and it gets no "wellhead price" for the gas, how Appellant can from day to day determine whether or not it is in compliance with the order, a violation of which is by law made the subject of severe penalties (R. 948). Argued under Point I of the Argument.

2. The Supreme Court of Oklahoma erred in failing to hold that Order No. 19514 of the Corporation Commis-

sion of Oklahoma appealed from in said consolidated cases and affirmed by the judgment therein, as applied to Appellant, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, that does not sell its gas at the wellhead but gathers, processes and elsewhere sells or usefully utilizes the same, deprives Appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because it is arbitrary, unjust and unreasonable, confiscates Appellant's property, has no reasonable relationship to the objects of its enactment and goes beyond the reasonable demands of the occasion in that as disclosed by the record and proceedings in said consolidated cases (a) Appellant does not now get nor does it have any reasonable means under the order of getting the prescribed "wellhead price" for its gas; (b) that to comply with the order appellant has no alternative other than to shut in its gas wells to its great detriment and irreparable damage; (c) that if the order denies to Appellant the right to take and use its own gas or if it requires Appellant to sell the same to others at the wellhead in order to get the prescribed price, it is for that reason alone arbitrary and capricious; (d) the order discriminates between producers having a wellhead market for their gas at the prescribed price and the Appellant which does not have such a market or means of getting such a price; (e) no waste or threatened waste of natural gas is prevented thereby; (f) no interests of the public are protected thereby; (g) no interests of those having a right to produce from the common source of supply are protected thereby; (h) the order does not prevent unreasonable discrimina-

tion between separate common sources of supply of gas but on the other hand results in such discrimination; (i) the purported objects to be accomplished by such order could more readily and more reasonably have been accomplished and dealt with in a direct and more effective way; and (j) enforcement of the order against Appellant will be confiscatory of its property, having a value of many millions of dollars (R. 949). Argued under Point II of the Argument.

5. The Supreme Court of Oklahoma erred in failing to hold that Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, Oklahoma Statutes 1941, to the extent that said law was held to authorize Order No. 19514 of the Corporation Commission of Oklahoma, deprives Appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the same reasons that said Order No. 19514, held to be authorized thereby, violates said constitutional limitations as stated in Assignment of Error 1 above set out (R. 950-951). Argued under Point III of the Argument.

6. The Supreme Court of Oklahoma erred in failing to hold that Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, Oklahoma Statutes 1941, to the extent that said law was held to authorize Order No. 19514 of the Corporation Commission of Oklahoma, deprives Appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the same reasons that said Order No. 19514, held to be authorized thereby, violates said constitutional limitations

as stated in Assignment of Error 2 above set out (R. 951). Argued under Point III of the Argument.

QUESTIONS PRESENTED AND SUMMARY OF ARGUMENT

The assignments of error intended to be urged embrace a concise and clear statement of the questions presented and summary of the argument.

ARGUMENT

Point I.

Order No. 19514 deprives Appellant of its property without due process of law in violation of Section 1 of the XIV Amendment to the Constitution of the United States because of being vague, indefinite and uncertain. (Assigned Error 1.)

The Supreme Court of Oklahoma in the judgment appealed from held that the order complained of "is legislative in character" and subject to the rules and principles "by which the validity of statutes are determined" (R. 916). Such is the general holding of this Court with respect to legislative orders of state administrative bodies such as the Oklahoma Corporation Commission. *Grand Trunk Western Railway Co.* v. *Railroad Commission*, 221 U. S. 400; *Bluefield Water Works & Improvement Co.* v. *Public Service Commission*, 262 U. S. 679; *Oklahoma Natural Gas Company* v. *Russell*, 261 U. S. 290; *John P. King Manufacturing Co.* v. *City Council of Augusta*, 277 U. S. 100; *Hamilton* v. *Regents of University of California*, 293 U. S. 245; *Midland Realty Co.* v. *Kansas City Power & Light*

Co., 300 U. S. 109; *Live Oak Water Users' Association* v. *Railroad Commission*, 269 U. S. 354; *Louisville and N. R. Co.* v. *Garrett*, 231 U. S. 298; *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55.

Section 247, Title 52, Oklahoma Statutes, 1941, being a part of the act (Sections 236-247, Title 52, Oklahoma Statutes, 1941) pursuant to which the Supreme Court of Oklahoma said Order No. 19514 was authorized and made, provides as follows:

> "In addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment."

Section 102, Title 52, Oklahoma Statutes, 1941, being a part of a later and more comprehensive act (Sections 81-135, Title 52, Oklahoma Statutes, 1941) as amended by Sections 86 and 87, Title 52, Oklahoma Statutes Cumulative Supplement 1947, under which the Commission controls and regulates the production of oil and gas and pursuant to the procedural provisions of which the Commission acts in this instance, provides in part as follows:

> "Any person who shall disobey or violate any of the provisions of this Act or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the commission in pro-

ceedings as for contempt for disobedience or violation of any provision of this Act or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of this Act, shall be by fine not exceeding in amount $5,000, and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount."

Section 19 of Article IX of the Oklahoma Constitution, creating and dealing generally with the powers and orders of the Oklahoma Corporation Commission, provides in part as follows:

"Any corporation failing or refusing to obey any valid order or requirement of the Commission within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense: * * *."

This Court in *Connally* v. *General Construction Company*, 269 U. S. 385, 391, has said:

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

To the same effect see *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 221; *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500, 518; *United States* v. *Reese*, 92 U. S. 214, 219; *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 81-82; *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 242-243; *Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233, 239; *Cline* v. *Frink Dairy Company*, 274 U. S. 445, 458; *Winters* v. *New York*, 333 U. S. 507, 515.

Although the question is usually raised in connection with some attempted penal enforcement of the statute or regulation, this Court in *Small Co.* v. *American Sugar Refining Co., supra*, a suit on contract, held that such was not sufficient to distinguish the cited cases. The Court at page 239, 267 U. S., said:

> "The defendant attempts to distinguish those cases because they were criminal prosecutions. But that is not an adequate distinction. The ground or principle of the decisions was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all. Any other means of exaction, such as declaring the transaction unlawful or stripping a participant of his rights under it, was equally within the principle of those cases. They have been so construed and applied by other courts in civil proceedings."

The pertinent provision (R. 18) of Order No. 19514 simply provides:

> "That no natural gas shall be taken out of the producing structures or formations of the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at

the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

What does the order mean as applied to Appellant, a producer who does not sell its gas at the wellhead or in the state, when it says that no gas shall be taken out of the producing formations *"at a price, at the wellhead, of less than 7¢ per thousand cubic feet"*?

Does this mean that an owner and producer of gas cannot produce what is otherwise determined to be its fair share of the total production of the field unless it makes an actual sale thereof at the wellhead?

Does it mean that an owner and producer of gas cannot take and use its own gas for some legitimate useful purpose of its own?

The word *"price"* normally and in its ordinary usage denotes that which is paid by a purchaser to a seller in connection with a sale. *Williams* v. *Hybskmann*, 311 Mo. 332, 278 S. W. 377; *Chicago, K. & W. R. Co.* v. *Parsons*, 51 Kan. 408, 32 Pac. 1083; *Guy* v. *McDaniel*, 51 S. Car. 436, 29 S. E. 196; *Luthy* v. *Waterbury*, 39 Ill. App. 317; *Brooke* v. *Eastman*, 17 S. D. 339, 96 N. W. 699.

Bouvier's Law Dictionary (Rawles 3rd Rev.), Vol. 3 at page 2683, defines "price" to mean: "The consideration in money given for the purchase of a thing." Ballentine's Law Dictionary at page 1009 defines it to mean: "The consideration of a sale, the amount paid or to be paid for the articles furnished by the seller."

Thus to give the word "price" its ordinary and legally accepted meaning, the order would mean that a producer in order to produce his gas and at the same time comply with the order must sell it to someone else, "at the wellhead", and receive therefor a "price", although such producer may itself have need for the gas for identically the same legitimate use as does the purchaser and is thus forced to buy gas elsewhere for his own needs. Such a result would certainly be unreasonable, capricious and absurd and for that reason violative of due process. Yet, grammatically, that is the logical and literal interpretation to be placed on the order. It would be equally absurd to say that a producer must sell his gas "at the wellhead" as it is that he must sell it at all.

The Oklahoma Corporation Commission recognized this ambiguity or absurdity, as the case may be, and the force of what has just been said, and has attempted to explain and justify the order by making the following finding in its Order No. 19702 (R. 853-855) denying Phillips' application to vacate said order:

> "* * * that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; * * *."

Assuming that the explanation contained in Order No. 19702 of what was intended by the vague, uncertain

and indefinite language of the original order is sufficient to modify the original order, nevertheless said order as thus modified is equally as vague, uncertain and indefinite as was the original order and for that reason is likewise unconstitutional and void in its modified form.

How and by what formula is a producer, such as Appellant, that does not sell its gas at the wellhead in its natural state, to know when it is realizing under the order "the equivalent of 7¢ per thousand cubic feet at the wellhead" at the designated pressure base? The order does not say. Instead it leaves open the widest conceivable inquiry, the scope and result of which no one can forsee. The producer must guess at the standards and procedures it is to adopt in making such determination under penalty of the law if the Commission or some court later determines that it guessed wrong.

The translation of the price received for or the value of gas or its by-products at a point other than the wellhead after gathering, transportation, processing, boosting, dehydration, further refinement and sale, into a "price equivalent" for the gas in its natural state at the wellhead is an uncertain, equivocal and complex accounting problem. Any number of accounting procedures could be used, each resulting in a radically different answer depending upon the factors taken into consideration, the assumptions made and the value attributed to the different factors. "Reasonable men will differ as to their application."

Must Appellant guess at the accounting procedures and assumptions that will comply with Order No. 19514 at the peril of being wrong and violating the order, making

of itself a law violator subject to the penalties thereof? Is each producer at liberty to pick its own procedures, pick the factors to be considered and decide on the weight to be given the assumptions it makes, dependent upon its own desires or advantage? If so, the order is meaningless. Each producer would, in effect, be setting up its own standards and making its own order. The Commission order would have no uniformity of application. Can this be?

The accounting problem is akin to that where a lease provides for the payment of royalty based on the proceeds received or value of the gas at the well but where the gas is sold or utilized elsewhere or, as in the case of Appellant, it is gathered and processed for the extraction of its liquid content and the by-products are sold or utilized elsewhere than on the lease. Such cases hold that the proceeds received or the value of the gas or its by-products elsewhere than at the wellhead are not to be regarded as the proceeds or value of the gas at the well and that in arriving at the proceeds or value of the gas at the well there is to be deducted from the proceeds received or value of the gas or its by-products elsewhere, the cost of gathering, transporting, processing, boosting, refining, sale and other items of cost entering into the proceeds received or value elsewhere or under different conditions than at the wellhead, including a reasonable return on investment. See *Katschor* v. *Eason Oil Co.*, 178 Okla. 634, 63 Pac. (2d) 977; *Armstrong* v. *Skelly Oil Co.* (5 C. C. A., Tex.), 55 Fed. (2d) 1066; *Scott* v. *Steinberger* (Kan.), 213 Pac. 646; *Kretni Development Company* v. *Consolidated Oil Corporation* (10 C. C. A., Wyo.), 74 Fed. (2d) 497; *Wall* v. *United Gas Public Service Co.* (La.), 152 So. 561; *Coyle* v. *Louisiana*

Gas & Fuel Company (La.), 144 So. 737; *Voshell* v. *Indian Territory Illuminating Oil Company* (Kan.), 19 Pac. (2d) 456, and *Molter* v. *Lewis*, 156 Kan. 544, 134 Pac. (2d) 404, both involving oil; *Sartor* v. *United Gas Public Service Co.* (5 C. C. A., La.), 84 Fed. (2d) 436; *Hemler* v. *Union Producing Co.* (D. C., W. D., La.), 40 Fed. Supp. 824.

No one of the foregoing cases purports to detail all of the items of cost that could or should be taken into account, nor to lay down any precise rules or standards for the determination thereof. Each case was decided on the basis of what was found by the court or the jury to be fair under the facts and what was contended for in the particular case.

In the case of *Katschor* v. *Eason Oil Company*, *supra*, where the gas was purchased for the extraction of gasoline, the Supreme Court of Oklahoma said the value of the gas at the wellhead may be established "by showing the difference between the sum of the sale price of the gasoline and residue gas and the sum of the cost of manufacture after production, the depletion of the plant, and the cost of marketing said products."

In the case of *Armstrong* v. *Skelly Oil Company*, *supra*, another processing case, the Court said that "shrinkage in extraction and the cost of manufacture, including overhead charges, and a fair return on investment" may be taken into consideration.

Other of the cases refer to "cost of transportation" or "charge for transportation" or "cost of boosting" or "charge for extracting gasoline", etc., dependent upon the nature of the case and the facts involved.

But what constitutes a proper charge for gathering, transportation, processing, manufacture, sale and other operations or services that may enter into the gross proceeds or value of the gas or its by-products elsewhere and under different conditions than at the wellhead? What is a "fair return on investment"? What rate of depreciation in lines and equipment? What method of allowing overhead? The courts lay down no fixed rule. The order in this case does not say.

Let us look at the problem confronting Appellant under the orders appealed from.

It does not sell its gas at the wellhead. By means of an extensive and costly gathering system it gathers and takes its own gas to a point several miles distant in Texas where it is processed in a gasoline plant owned and operated by Appellant for the extraction of liquid hydrocarbons. The processed residue, less so much thereof as is consumed as plant fuel, is then dehydrated and sold. The raw liquids have no market value and are transported another fifty or sixty miles to a central treater owned and operated by Appellant at Borger, Texas, where by fractionation and refinement they are broken down into a number of by-products, principally 26-70 gasoline, butane and propane, some of which are sold and others consumed by Appellant in its own operations or used in the manufacture by it of other products for use or sale. (See Statement of Case, *supra.*)

The first point or points in the course of the foregoing series of operations at which the amount of any "price" or value in money can be attributed to the gas or its by-

products is, insofar as the residue is concerned, at the time of the sale thereof to Panhandle Eastern Pipe Line Company, and in the case of the liquids, at the time they are broken down and further refined into 26-70 gasoline, butane and propane after fractionation at Borger.

Under Order No. 19514 how can Appellant know what it must receive gross for the gas and the processed liquids in order that it may be said that it is receiving an "equivalent of 7¢ per thousand cubic feet" for the raw gas "at the wellhead" on a 14.65-pound pressure base? What costs are to be allowed or charge made for gathering and transporting the gas to the gasoline plant in Texas—½¢, 1¢ or 2¢? What charge is to be made for the maintenance and operation of the gasoline plant in performance of the other operations and services required under its contract as an incident to the sale of the residue gas to Panhandle Eastern Pipe Line Company? Under the contract the gas so sold must be dehydrated, boosted to a certain delivery pressure and must meet certain requirements as to purity. All are special services entering into the price received therefor and for which there is no fixed charge.

What value is to be placed on the gas consumed as plant fuel?

What charge or allowance for costs is to be made for taking the liquids having no commercial value at the gasoline plant to the central treater at Borger and there processing the same?

The market values ascribed to the processed liquids at Borger contemplate a sale thereof. What is to be charged as a proper sales expense?

Under the principles announced in the above cited cases Appellant in figuring such charges or costs would be entitled to include overhead, depreciation and reasonable return on its investment.

How much overhead? What is to be included as overhead? Is it to be on the basis of capital employed or on the basis of services performed? Overhead is defined in 65 C. J. 1161 as "a word of vague content which has recently been introduced in accounting." Yet it is a proper item of cost. *Armstrong* v. *Skelly Oil Company, supra; Fort Dearborn Trust & Savings Bank* v. *Skelly Oil Co.*, 146 Okla. 179, 293 Pac. 557, 563; *Texas Company* v. *Roos* (5 C. C. A.), 43 Fed. (2d) 1, 14.

What depreciation base and rate is to be used? There are many methods of computing depreciation, with varying results, particularly by periods. Among such methods are the straight line method, reducing balance method, equal annual method, production method and others. The reducing balance method v. the straight line method, for instance, for the same period will give a very different answer and give different answers for different periods. The order appealed from applies to g... produced daily and hence the amount of depreciation figured by periods would be material. Other cases holding that depreciation is a proper item of operating cost are *Fairbanks, Morse & Co.* v. *City of Wagoner, Oklahoma* (10 C. C. A.), 81 Fed. (2d) 209, 219 (modified on other grounds, 86 Fed. [2d] 288); *Oklahoma Natural Gas Co.* v. *Corporation Commission*, 90 Okla. 84, 216 Pac. 917, 923; *Springfield Gas & Electric Co.* v. *Public Service Commission of Missouri*, 10 Fed. (2d) 252.

What return on investment is to be allowed? On a several million dollar investment and operation, as in Appellant's case, a variance of ½% or 1% is an important item.

These are all questions of importance concerning which Appellant must, in advance, guess at what answer would constitute an acceptable compliance with the orders. There is no doubt that men of common intelligence can and will differ as to the application of the order in such a situation. This is what this Court in *Connally* v. *General Construction Company, supra,* said "violates the first essential of due process of law."

By what token can the Commission say that a figure "approximating" 7¢ per thousand cubic feet at the wellhead is a compliance with the order? The order says "7¢". What is approximate? With what assurance can a producer guess at what approximate figure will constitute compliance with the order. Suppose that as a result of the calculation aforesaid the answer was 6.512¢ per thousand cubic feet. Would such answer be sufficiently "approximate"?

Point II.

Order No. 19514 deprives Appellant of its property without due process of law in violation of Section 1 of the XIV Amendment to the Constitution of the United States because of being arbitrary, unreasonable and confiscatory, has no reasonable relationship to the objects of its enactment and goes beyond the reasonable demands of the occasion. (Assigned Error 2.)

To more clearly present the constitutional objections raised under this point it is necessary to first analyze the order complained of, the statements of its objects as defined by the court below, and the facts.

The order is one directed against the producer. The court below said: "The regulation applies to the production of natural gas * * *." (R. 914) It makes no exception with respect to any producer or in respect to any use of the gas. The order is not one directed against the purchaser.

Quoting from the statute under which it held the order was made, Section 239, Title 52, Oklahoma Statutes 1941, the Court stated the objects of the order to be:

(1) The prevention of waste.

(2) The protection of the interest of all those having a right to produce from a common source of supply.

The court further interpreted this object to include the landowner and royalty owners as well as the lessee.

(3) The protection of the interest of the public.

The court, in addition to the conservation of gas, interpreted this object to include the interest of

the sovereign state in the gross production tax revenue measured by the market value or price of the gas.

(4) The prevention of unreasonable discrimination in favor of one source of supply against another.

A brief analysis of the pertinent parts of the evidence on which Order No. 19514 was based is as follows:

The great majority of the evidence consisted of testimony as to the comparative value of the heating content and existing prices of gas in the Guymon-Hugoton Field with that of coal and other fuels and that in the opinion of the witnesses the sale of the gas at a price less than parity with that of such other fuels or for a price less than its so-called intrinsic value for chemical and other special uses constituted "economic waste". It was testified that the heating value of the gas figured on the same basis as that of coal was in excess of 10¢ per thousand cubic feet.

Three witnesses; William D. Weindlein (R. 119-120), a consulting engineer from St. Paul, Minnesota, M. L. Mayfield (R. 163), a gas consultant of Houston, Texas, and Walker T. Pound (R. 282-283), conservation officer for the Corporation Commission, testified that in their opinion there was a relationship between price and the conservation of gas. Neither Mr. Weindlein nor Mr. Mayfield gave any explanation of such relationship or any factual data in support thereof other than a statement by Mr. Mayfield that in his opinion it was fundamental that as things become more valuable there is more effort to conserve them (R. 163). The only example cited by Mr. Pound was that there was some venting of gas in the completion of wells,

which in his opinion would not occur if the price was higher (R. 292-293). When asked to name an amount that had been so vented, he merely answered, "I can name 1,000 cubic feet", and when asked where it was, he merely answered, "Give me one of your wells, and I will tell you" (R. 294). In other words, the volume was only nominal and he knew of no specific instances. Neither Mr. Weindlein nor Mr. Mayfield testified to ever having been in the field.

Aside from the testimony above there was no evidence of any waste of gas in the field. Mr. Pound testified (R. 287):

Q. "There has not been any physical waste has there?

A. I don't know.

Q. Not to your knowledge?

A. The basic Hugoton Order has probably prevented what waste might have occurred. There were many instances in the past, prior to the issuance of the order.

Q. Since that order there has been no waste?

A. I would not say there has been none, there has been less.

Q. Well, I asked you whether there was and is and you said none to your knowledge, now do you want to reconsider?

A. You are talking abou' ac ual physical waste?

Q. Yes.

A. I will say that there is none out there."

In a statement made to the Federal Power Commission on October 9, 1945, shortly prior to the hearing in

this case, he said (R. 472): "Insofar as the physical waste of dry gas is concerned, there is none in Oklahoma."

Mr. L. M. Batten, district superintendent for Cities Service Gas Company, testified at length to operations in the field and the fact that they were conducted in accordance with good and accepted practices (R. 340-353). He said (R. 350-351): "We are trying to operate and save all the gas we can. I don't know whether a price increase—I don't know how it could change it myself." No one testified to the contrary.

A representative of the Oklahoma School Land Commission testified that the School Land Commission owned several thousand acres of land in the field which was leased to different producers and from which it was being paid royalty on the basis of 4¢ and 5¢ per thousand cubic feet of gas (R. 182-184).

The testimony of a large number of other royalty owners was merely to the effect that they wanted more money (R. 112-117).

Mr. M. L. Mayfield, the gas consultant from Houston, Texas, who testified that he had been employed in the case in April of 1946 (R. 257) preceding the hearing in May, and who did not go to the field (R. 218), in answer to a question if he had an opinion as to the cause of the "depressed price" of gas in the Guymon-Hugoton Field, said (R. 162-163):

> "Well, in the early period of its production there natural gas was of little value, since it was just an incident to the search for oil, and they didn't have adequate market facilities. The price paid for it was

little more than a token price and in some instances it was even given away, in order to perpetuate the lease. In the course of development major companies acquired large blocks of acreage and after the discovery of the gas they were forced to seek and secure markets and after the laying of transportation lines and development of the market it has been a very profitable arrangement, due to the large blocks closely held, and the companies were marketing their own gas—lease holders of smaller character and smaller owners, not having financial backing and resource were not even given the opportunity to market their gas,—as a result the price was depressed and has remained depressed throughout the gas industry."

We cite the foregoing statement not that we think it rises to the dignity of evidence but because the Court in its opinion refers thereto as a justification for the order. The witness made no further statement or explanation in regard thereto.

There was no testimony whatever that the fixing of a price a producer must get for its gas has any relation to or affects in any way the correlative rights as between the several producers in the field.

The Corporation Commission long prior to the proceedings in this case, by what was known as the basic field order, established the basis for determination of the fair share of the gas each producer was entitled to produce (Exhibit 9, R. 535). By another order (Exhibit 70, R. 637), known as the state-wide rules, the Commission had enacted rules governing the prevention of waste of oil and gas and the ratable production thereof as applied to all

pools in the state, except to the extent modified by special rules for a particular field.

As stated elsewhere in this brief, there was no evidence of any waste or wrongful practices on the part of Appellant or that the use or other disposition made by Appellant of its gas or by-products thereof was in any way improper.

The foregoing, together with the additional facts stated in the Statement of Case and under Point I of the Argument, fairly summarizes the material facts in the case said by the court below to authorize the order complained of.

Appellant does not contend that the State of Oklahoma in the proper exercise of the police power in the public interest may not itself or through the Corporation Commission reasonably regulate and restrict the production of gas to prevent the waste or wasteful utilization thereof or to protect the correlative rights of the several owners of a common source of supply.

But as has been repeatedly said by this Court, the state may not, under the guise of the police power or the public interest, arbitrarily invade the personal rights and liberties of individual citizens, interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 513; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262; *Seattle Title & Trust Co.* v. *Roberge*, 278 U. S. 116.

Or as was said by this Court in the case of *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 69:

"But, obviously, the proration orders would not be valid if shown to bear no reasonable relation either to the prevention of waste or the protection of correlative rights, or if shown to be otherwise arbitrary."

It is also the general rule that the exercise of the police power must be for the public welfare or in the public interest, that is, for the benefit or protection of the members of the public or of the community as a group and not for the private gain or benefit of individual members of such group. One person's property may not thus be taken and given to another; *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 79; *Great Northern Railway Co.* v. *Minnesota*, 238 U. S. 340; *Missouri Pacific Railway Co.* v. *Nebraska*, 164 U. S. 403; *Missouri Pacific Railway Co.* v. *Nebraska*, 217 U. S. 196; *Great Northern Railway Co.* v. *Cahill*, 253 U. S. 71; *Citizens Savings & Loan Association* v. *Topeka*, 20 Wall. 655; *Cole* v. *La Grange*, 113 U. S. 1; *Myles Salt Co.* v. *Iberia and St. M. Drainage District*, 239 U. S. 478; *Hairston* v. *Danville & W. R. Co.*, 208 U. S. 598; *Rindge Co.* v. *Los Angeles County*, 262 U. S. 700.

Order No. 19514 violates all of the principles so stated.

Here presented is a situation where an individual owner and producer of gas, whether from his own lands or lands lawfully leased from others, and otherwise free to produce, sell, use or otherwise dispose of such gas at such price and on such terms as it sees fit, is expressly prohibited from so doing except at the minimum price named in the order. Such right to possess, manage, use, sell or otherwise dispose of its property, together with the right to fix the price and terms of sale is an inherent right

of property subject to the XIV Amendment to the United States Constitution; *Buchanan* v. *Warley*, 245 U. S. 60, 74; *Tyson & Brother—United Theatre Ticket Officers* v. *Banton*, 273 U. S. 418, 429; *Washington ex rel. Seattle Title & Trust Co.* v. *Roberge*, 278 U. S. 116; 11 Am. Jur. 1146, Sec. 335; 16 C. J. S. 1196, Sec. 599.

Before proceeding to a consideration of the named objectives of the order complained of and its invalidity on that account, it should be made clear that it has long been held that the production of gas in Oklahoma is not such an activity or a business so affected with a public interest to be subject to regulation fixing the price for which the producer must sell its gas; *Sterling Refining Co.* v. *Walker* (1933), 165 Okla. 45, 25 Pac. (2d) 312, 320; *Nowata Gas Co.* v. *Henry Oil Co.* (8 C. C. A., Okla., 1920) 269 Fed. 942.

In the case of *Sterling Refining Co.* v. *Walker*, it was said:

> "Petitioners further contend that the act in question is also unconstitutional because it confers upon the Corporation Commission the authority to fix the price of oil, and they further assert that the orders promulgated by the Corporation Commission under the authority of this conservation act were for the purpose of establishing or regulating the price. It has been universally held that, unless a business is so affected with a public interest in the sense that the regulation of the price thereof is essential to the protection of the public, it is beyond the authority of the state or of the nation to regulate the price of the commodity. Businesses warranting regulation by price fixing are usually monopolistic in character. *Williams*

v. *Standard Oil Co.*, 278 U. S. 235, 49 S. Ct. 115, 73 L. Ed. 287, 60 A. L. R. 596; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 52 S. Ct. 371, 76 L. Ed. 747.

"The oil and gas business does not fall within this class, and thus legislation for the purpose of establishing or fixing the price cannot properly be enacted. *People's Petro. Producers* v. *Smith* (D. C.), 1 F. Supp. 361."

The holding in the two cases last cited is in accord with the holding of this Court in the case of *Tyson & Brother—United Theatre Ticket Officers* v. *Banton*, 273 U. S. 418, 429; *Williams* v. *Standard Oil Co.*, 278 U. S. 235; *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262; *Ribnik* v. *McBride*, 277 U. S. 350.

It is to be noted that the order in this case does not purport to fix the price a producer must get for its gas for the protection or benefit of the purchaser or the consuming public but, according to the court below, for the individual benefit and protection of the producer and his lessor or royalty owners and state revenue.

Not all the objects and purposes of Order 19514 as interpreted by the court below are within the proper exercise of the police power of the state and none find justification under the facts for their application in this case.

FIRST—The prevention of waste. It is conceded that the prevention of the waste of gas is an object within the scope of the police power of the state. Here, however, the facts do not warrant the exercise of the police power on this account.

There was no waste or threatened waste of natural gas. As stated by Mr. Pound, "The basic Hugoton Order has probably prevented what waste might have occurred." The mere statement of opinion unsupported by any facts that there is a relation between the price and the conservation of gas because the more valuable a thing becomes the more apt a person is to conserve it, is but a debatable philosophic statement that does not rise to the dignity of fact or evidence. Where, however, there is no actual waste or threatened waste and the producers are recovering all the gas possible, there is nothing more to be accomplished. Is it reasonable to suppose that producers who have spent millions of dollars to drill and develop their properties and who depend solely upon the gas recovery as the life blood of their investment and business are not going to use every reasonable effort to recover and conserve every foot of gas possible and use or sell it to the best possible advantage? The talk about the venting of gas in connection with the completion of wells is negligible. The state-wide rules of the Corporation Commission regulating the drilling for and marketing of gas all over the state expressly authorize such practice (Exhibit 70, R. 637, 663). If objectionable, it could readily be stopped by a simple order to that effect without upsetting the whole economic structure of the entire field and invading and taking away the inherent property rights of every producer.

There being no actual or threatened waste of gas forced the proponents of the order and the Commission to invent what they have chosen to call "economic waste", defined by them to be the selling by the producer of gas for a price below parity with other fuels or below its value

for some special use. So-called economic waste to the producer is not what the statute or what this Court in the case of *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 69, and other conservation cases, was talking about in referring to the "waste of gas". We know of no direct public interest in what the owner gets for his gas. If the owner wants to sell it at a price below parity with other fuels or at a price below its value for some special use or if he wants to give it away, that is the right of the individual owner in which the public has no interest, except only where the question of unfair competition, anti-trust laws and the like is at issue, a subject of regulation not here involved. There was no proof that the current market price for gas in the field was below the cost of development and operation so as to force the abandonment of properties. On the other hand, the proof was that the producers were making a profit over and above the cost of recovery. Nor can it seriously be contended that by so increasing the price of gas the order had as a valid object the prevention of its utilization for inferior uses. No one testified that the gas produced in the field was being used for any inferior uses. Instead the record is replete with evidence that it is all going for accepted and recognized useful purposes. Like in the case of the venting of gas, if the object to be accomplished was to prevent the use of gas for certain inferior uses, such objective could more readily and effectively be accomplished by a simple order prohibiting its production for such inforior uses, as was done in the carbon black cases; *Walls* v. *Midland Carbon Co.*, 254 U. S. 300; *Quinton Relief Oil & Gas Co.* v. *Corporation Commission of Oklahoma*, 101 Okla. 164, 224

Pac. 156. The order in the instant case would permit the gas to be used for any purpose the producer or its purchaser cared to use it for, wasteful or otherwise.

That the power of the state to limit and control the production of its natural resources for the prevention of waste is limited to waste of the resource itself and not some economic theory of waste from the standpoint of price was made clear by the Oklahoma Supreme Court in the earlier oil case of *Sterling Refining Co.* v. *Walker*, 165 Okla. 45, 25 Pac. (2d) 312, 321, overlooked by it in its decision of the instant case and wherein it said, in considering a statute that defined waste to include economic waste:

> "The power of the state to regulate, control and limit the production of oil from any common source of supply is for the purpose of preventing physical waste thereof. It recognizes an interest in the state in the conservation of a great natural resource. For the proper accomplishment of this end oil conservation laws may be enacted. But the accomplishment of this end may not be used as a cloak or guise to control the price of oil. Of course, the limitations of the production for the purpose of preventing physical waste may affect the price. However, we do not regard this more or less natural effect as rendering the act in question or the administration thereof invalid. It renders orders objectionable only when and if price fixing is taken into consideration as an element in fixing the amount of allowable production from a common source of supply."

SECOND—The protection of the interest of all those having a right to produce from a common source of supply. To the extent that "the protection of the interest of all

those having a right to produce from a common source of supply" means the "correlative rights" of the several owners of different tracts having a corresponding right to produce from the same common reservoir as in the many oil and gas conservation cases coming before this Court, we of course agree that it is an authorized objective within the scope of the reasonable exercise of the police power of the state; *Ohio Oil Company* v. *Indiana*, 177 U. S. 190; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, and the many other such cases.

There was, however, no evidence in this case nor are there any facts here present that would give rise to the order in question on such account. The price which a particular producer gets for his fair share of the gas after it is produced has no relation to the correlative rights of a producer in some other part of the field. For example, it is of no concern to Peerless Oil and Gas Company, a producer in another part of the field, what Appellant gets for its gas after it is produced. The fair share of each in and to the gas to be produced from the reservoir is determined under other orders not here in question.

As a matter of fact, the order is antagonistic to the correlative rights of the several producers of the different tracts in the common source of supply. Under such order the producer of a tract who happens to be fortunate and have a market or use for his gas that will yield to him the price prescribed by the order is allowed to produce such gas whereas the producer who for some reason happens not to have such a market is forced to shut in its wells. The matter of shifting markets from one part of the

field to another is not as simple as it may sound. One trouble with the order in question is that it does not take into account any of the practical, economic or other operating problems of the producer in such a field. Division of the gas on the basis of the price a producer is able or chooses to get is not a recognized or fair basis of distribution.

The court below, however, discusses this particular objective in the sense that it means the rights and interests of the owners of a particular tract to get a desired amount for the gas from that particular tract and the matter of the rights as between such owners. This cannot be and still be within the proper exercise of the police power. For the Commission to make an order to allow the individual owners of the different tracts to in some way get an increased amount of financial gain or to adjust the rights as between the owners of the tract, for example, as between a lessee and a royalty owner, is purely and simply a matter of private interest to and as between such owners and not a matter of public interest necessary to the exercise of the police power. However phrased it would resolve itself into a matter of compelling some private person to pay money to some other private person or the adjustment of private rights, which is invalid as violative of the Federal Constitution; *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 79; *Missouri P. R. Co.* v. *Nebraska*, 164 U. S. 403; *Missouri P. R. Co.* v. *Nebraska*, 217 U. S. 196; *Great Northern R. Co.* v. *Minnesota*, 238 U. S. 340; *Great Northern R. Co.* v. *Cahill*, 253 U. S. 71; *Delaware, L. & W. R. Co.* v. *Morristown*, 276 U. S. 182; *Chicago, St. P. M. & O. R. Co.* v. *Holmberg*, 282 U. S. 162; *Citizens' Sav. & L. Asso.* v. *Topeka*, 20 Wall. 655; *Cole* v. *La Grange*, 113 U. S. 1; *Myles Salt*

Co. v. *Iberia & St. M. Drainage Dist.*, 239 U. S. 478; *Hairston* v. *Danville & W. R. Co.*, 208 U. S. 598, 605, 606; *Rindge Co.* v. *Los Angeles County*, 262 U. S. 700, 705.

As was said in the case of *Treigle* v. *Acme Homestead Association*, 297 U. S. 189, 197:

> "Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

Under this same heading the court below talks about possible monopolistic practices existing as between producers and purchasers and thereby depressing the price of gas against which the royalty owner should have protection. In the first place, there was no evidence of any collusion as between any of the producers or as between the purchasers or as between any producer and any purchaser. If such a situation did exist, it might be the proper subject of consideration under the monopoly statutes of the state with resulting action of some kind against those persons engaging in unfair or monopolistic practices and not by an order under the guise of a conservation regulation directed against every producer in the field. Appellant is not a purchaser. It is not engaged in any monopolistic practices in respect to the purchase of gas. It is not the victim of any monopoly. Instead it as a producer owning gas properties set out to establish a use and market for its gas as every other producer in the field had a right to do. If

any of its royalty owners are dissatisfied with what it as a producer does with the gas, the problem is simply one of private contract.

THIRD—The protection of the interest of the public. In addition to the interest of the public in respect to the matter of conservation of natural gas, which is fully covered under the first subdivision above, the court below says that the "interest of the public" includes the interest of the sovereign state in and to the revenue derived from the gross production taxes measured by the market value or price of the thing produced. We have been unable to find any case or situation where there has been an attempted exercise of the police power for the purpose of creating an artificial price structure so as to maintain taxes. The absence of such cases would certainly negative the idea that the power exists. If such were not the case there would be no field of private rights or endeavor free from the exercise of the police power.

Nor would the royalty interest of the State School Land Commission constitute a public interest in a sense that would give rise to the exercise of the police power to invade the private rights of private interests for the financial gain of such governmental agency. It is an accepted principle, requiring no citation of authority, that a state body acting in a proprietary capacity has no different standing in respect to private individuals than do other private individuals. For a sovereign power to invade the private rights of others in the interest of the sovereign it does so under the right of eminent domain where compensation is provided for the right so invaded.

FOURTH—The prevention of unreasonable discrimination in favor of one source of supply against another. There was no testimony involving the matter of discrimination as between pools that would be corrected by the order in question. As a matter of fact, the Commission in its order made no finding in such regard and did not name this objective as a ground of the order.

Thus the order in question is clearly subject to the evils denounced in the case of *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, wherein this Court struck down as unconstitutional an order of the Texas Railroad Commission purporting to have been entered under the guise of the police power to prevent waste and protect correlative rights and which this Court said in reality was to give certain private interests, namely, producers in the field, an opportunity to appropriate a market established by other individuals, which this Court said was clearly not in the public interest. Here the real objective is not any purpose of public interest justifying the exercise of the police power but is simply an attempted means to give to Peerless Oil and Gas Company, a private person, and a group of royalty owners a greater private return.

The case likewise comes within the principle of the case of *Tyson & Brother—United Theatre Ticket Officers* v. *Banton*, 273 U. S. 418, and the cases therein cited, holding that private persons, such as Appellant in this case, are not subject to price regulation in the absence of some compelling public interest not here existent.

Assuming, however, that all of the objectives named by the court below are within the proper exercise of the

police power and that facts existed that would warrant action under the police power in respect thereto, nevertheless the order in this case is an arbitrary, capricious and unreasonable exercise of that power.

Something is vitally and definitely wrong when all that is required to upset the economic structure of one of the world's largest gas fields, invade the private rights of persons established at the cost of millions of dollars, and provide for a different medium of adjustment of rights between lessees and royalty owners, all as a result of a four-line order embracing but one sentence. No attempt is made to distinguish between producers who have certain markets for their gas and producers who do not or as between the producers first named and a producer that chooses in the exercise of its inherent right of property to utilize its gas in some other way than by the sale thereof either at the wellhead or elsewhere in its natural state.

The order in question does not so much as make an exception for a producer who may want to produce a part of his own gas for use as fuel in the operation of the lease from which it was produced except that it be at the "equivalent" of the prescribed price when, as a matter of fact, there is no way known to the mind of man whereby a producer can pay to himself a price for gas so used.

A most serious objection to the order is that stated in *Tyson & Brother—United Theatre Ticket Officers* v. *Banton*, 273 U. S. 418, 442-443, to the effect that a price-fixing order to cure some evil existing on the part of certain individuals or companies which is made to apply in respect to the

private rights and interests of a class wholly irrespective of the guilt or innocence of the persons affected, is arbitrary and void under the due process clause of the Federal Constitution. The Court in that case said:

> "It is urged that the statutory provision under review may be upheld as an appropriate method of preventing fraud, extortion, collusive arrangements between the management and those engaged in reselling tickets, and the like. That such evils exist in some degree, in connection with the theatrical business and its ally, the ticket broker, is undoubtedly true, as it unfortunately is true in respect of the same or similar evils in other kinds of business. But evils are to be suppressed or prevented by legislation which comports with the Constitution, and not by such as strikes down those essential rights of private property protected by that instrument against undue governmental interference. One vice of the contention is that the statute itself ignores the righteous distinction between guilt and innocence, since it applies wholly irrespective of the existence of fraud, collusion or extortion (if that word can have any legal significance as applied to transactions of the kind here dealt with — *Com.* v. *O'Brien*, 12 Cush. 84, 90), and fixes the resale price as well where the evils are absent as where they are present. It is not permissible to enact a law which, in effect, spreads an all-inclusive net for the feet of everybody upon the chance that, while the innocent will surely be entangled in its meshes, some wrongdoers also may be caught."

In this instance the order applies in respect to every producer in the field regardless of his method of operation, regardless of whether or not he is guilty of waste, regardless of whether or not he is a part of any monopoly, re-

gardless of the uses made by him of his gas, all in respect to a legitimate enterprise recognized as valid under other orders of the Commission.

Perchance any of the evils exist which it is claimed are to be corrected by the order, they are all evils that could be corrected by a simple order dealing directly with such evils and affecting only the rights and interests of those who may be guilty.

Point III.

Statutes of Oklahoma, to the extent that such statutes are construed to authorize Order No. 19514, contravene the XIV Amendment to the Constitution of the United States for the same reasons that said order violates said provision of the Constitution. (Assigned Errors 5 and 6.)

To the same extent and for the same reasons that Order No. 19514 violates the XIV Amendment to the Constitution of the United States, Chapter 197 of the Oklahoma Session Laws of 1915, being Sections 236 to 247, Title 52, Oklahoma Statutes 1941, held to authorize said invalid order, would likewise be unconstitutional and void. Such constitutional objections having been fully presented under Points I and II of the argument above, the same are here applicable and by reference adopted as the argument of Point III.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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October, 1950

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 73

PHILLIPS PETROLEUM COMPANY, A CORPORATION,
Appellant,

vs.

THE STATE OF OKLAHOMA, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, A CORPORATION, COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, AND CITIES SERVICE GAS COMPANY, A CORPORATION,
Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPLY BRIEF OF APPELLANT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 73

PHILLIPS PETROLEUM COMPANY, A CORPORATION,
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THE STATE OF OKLAHOMA, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, PEERLESS OIL AND GAS COMPANY, A CORPORATION, COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, AND CITIES SERVICE GAS COMPANY, A CORPORATION,
Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPLY BRIEF OF APPELLANT

General Statement

Before considering separately the several propositions presented in the brief of Appellees, certain general observations are in order.

Attention is called to the fact that Appellees both in their brief in this case and their brief in the case of *Cities*

Service Gas Company v. *Peerless Oil and Gas Company et al.*, No. 153, October Term, 1950, confirm the fact that Order No. 19515 is one directed solely against Cities Service Gas Company and that only Order No. 19514 is general in its application. We mention this in connection with the elimination of reference to and consideration of Order No. 19515 as having any relation to Appellant.

Appellees, however, in their briefs in both cases, in attempting to justify Order No. 19514, do not discriminate between a "producer" and the "purchaser" and the statutes and orders as applied to each. Although they at times refer to Order No. 19514 as applying to the production of gas, they for the most part talk of alleged evils having only to do with the pipe line purchasers of gas, principally Cities Service Gas Company, and treat the order as one directed against the purchaser. They talk about the monopolistic price and other controls by the gas purchasing companies; the discrimination by the purchasing companies between producers and as between pools; the refusal of Cities Service Gas Company as a purchaser to take ratably from other producers; and other matters that would relate only to persons engaged in purchasing gas from others. They refer to the findings of Orders Nos. 19514 and 19515, virtually all of which have to do with Cities Service Gas Company as a common purchaser. They cite Order No. 1662 of the Oklahoma Corporation Commission, dated July 1, 1920, as a precedent for the price fixing power of the Commission, which order was one made under the public utilities statutes of the State against a utility purchasing company regulating what it as a purchaser should pay to the well owners (see order set out in its entirety as Appendix D to brief of Appellant Cities Service Gas Company in Case No. 153).

In fact, Appellees in their brief in Case No. 153, which

they adopt in this case, refer to Order No. 19514 as one directed against purchasers as distinguished from producers. At page 2 of said brief they say, "Order No. 19514 is general, that is, is not directed to any company by name, but is intended to have general application to all *purchasers of gas* in the field, and it provides that no gas shall be taken therefrom at a price less than 7 cents per MCF at a pressure of 14.65 lbs.", and at page 55 they say, "It requires *purchasers to pay the same price* upon the same basis of measurement and thus not only prevents Appellant *and other purchasers* from discriminating as between sellers, but it makes the same requirement of all *purchasers*, and thus prevents discrimination as against Appellant." (Emphasis is ours). The term "Appellant" in the last quotation refers to Cities Service Gas Company.

Although the court below determined that only Order No. 19515 was made pursuant to Section 233, Title 52, O. S. 1941, Appellees in their brief cite and talk in terms of both said Section 233 and Section 240, Title 52, O. S. 1941, as authorizing both Orders Nos. 19514 and 19515. Said Section 233 clearly and unequivocally has to do with the obligation of a taker or purchaser of gas ratably from another as seller, whereas said Section 240 is expressly limited to persons declared to be "a common purchaser" and governs the purchase of gas by such a "purchaser".

Appellant Phillips Petroleum Company is simply a producer. It gathers, processes and sells or otherwise disposes of the processed by-products of gas from only its own wells. The only gas produced by it is gas determined by other orders of the Corporation Commission to be its ratable and fair share of the gas from the pool. It makes no sale of its gas or the products thereof at the wellhead or elsewhere in Oklahoma. It neither buys, sells nor transports gas of others. No one has demanded of Appellant

that it buy, sell or transport their gas. Appellant's situation involves no problem of ratable taking or of discrimination. It it not charged that Appellant is draining gas from under any leases other than its own. The only drainage talked about in this case is the alleged drainage by Cities Service Gas Company of gas from under the leases of Peerless Oil and Gas Company many miles distant from the leases of Appellant. Appellant is not a party to any dispute with any seller, buyer or other producer with respect to the price or terms of taking gas from the field. It is neither a party nor subject to any of the so-called monopolistic practices of pipe line purchasers. There is no alleged monopoly on the part of the producers. No criticism is made by anyone of the use or disposition made by Appellant of its gas.

Appellees in their brief do not charge the facts in respect to Appellant to be otherwise than as stated above.

The point we make is this, that the evils talked about by Appellees as justifying Order No. 19514 have to do primarily with purchasers and not to the order as applied to a producer. The court below determined that the order "applies to the production" of natural gas (R. 914).

With the foregoing in mind, we proceed to a separate consideration of the several propositions presented by Appellees in their brief in this case.

Reply to Proposition I

Appellant takes no issue with Appellees' Proposition I or of the cases cited in support thereof. Instead, Appellant in its principal brief accepted the statement of the court below that Order No. 19514 was made pursuant to the last sentence of Section 239, Title 52, O. S. 1941, to the effect that the Corporation Commission under certain circumstances was given the authority to prescribe rules and

regulations "to prevent waste, protect the interest of the public, and of all those having the right to produce therefrom, and to prevent unreasonable discrimination in favor of one such common source of supply as against another", and the court's interpretation thereof as giving to the Commission authority to fix prices "where necessary to the attainment of such ends", but then proceeded to point out wherein such interpretation is repugnant to Due Process, and wherein the particular order is not warranted under the facts, is void because of being vague, indefinite and uncertain, is arbitrary, unreasonable and confiscatory, has no reasonable relationship as the object of its enactment and goes beyond the demands of the occasion. Appellant does not attempt to go behind the interpretation by the court of such statute.

It is under Proposition I that Appellees cite Sections 231 through 233 of Title 52, O. S. 1941, as giving to the Corporation Commission the authority to fix the price of gas. Attention is called to the fact that the court below relies upon the 1913 law, of which such sections are a part, only as authority for Order No. 19515 directed against Cities Service Gas Company as a purchaser of gas from Peerless Oil and Gas Company, and not as authority for the general Order No. 19514, which alone applies to Appellant. In this respect the Appellees attempt to go behind the interpretation by the court below in respect to the applicable statutes.

Reply to Proposition II

The cases cited and relied upon by Appellees under their Proposition II state certain well defined principles with which Appellant does not in this case take issue. Such principles, however, have their limitations and are clearly not applicable here.

Although a state may prohibit a foreign corporation from doing intrastate business within the limits of such state, or may prescribe conditions upon the entry of a foreign corporation into the state, it may not as a condition to its entry in the state impose conditions which require relinquishment of rights guaranteed by the Federal Constitution, *Hanover Fire Insurance Company* v. *Carr*, 272 U. S. 494; *Quaker City Cab Company* v. *Pennsylvania*, 277 U. S. 389; *Frost* v. *Railroad Commission*, 271 U. S. 583; *Williams* v. *Standard Oil Company*, 278 U. S. 235, and the cases therein cited.

The case of *Pierce Oil Corporation* v. *Phoenix Refining Company*, 259 U. S. 125, and the other cases cited by Appellees as having followed such case, are all predicated on the principle of estoppel, that a person proceeding under and accepting the benefits of a particular statute may not be heard to attack the constitutionality of such statute. In the *Pierce Oil Corporation* case the Pierce Oil Corporation not only entered the state as a foreign corporation after the enactment of the statute but acquired the right to lay its lines and to carry on the particular business in which it was engaged under the particular statute claimed by it to be invalid. This Court held that it could not accept the rights and benefits dependent upon said statute and at the same time attack its constitutionality. This explanation and limitation of the effect of the said case is not only pointed out in the decision but is made clear in the cases cited by Appellees. See also *United Fuel Gas Company* v. *Railroad Commission of Texas*, 278 U. S. 300; *Wall* v. *Parrot*, 244 U. S. 407; *Buck* v. *Kuykendall*, 267 U. S. 307, 69 L. Ed. 623; *Spaulding* v. *Douglas Aircraft Company* (9th CCA), 154 F. 2d 419; *Commissioner of Internal Revenue* v. *Independent Life Insurance Company* (6th CCA), 62 F. 2d 1066; *Seaborn* v. *Wingfield* (*Nevada*), 48 P. 2d 881.

In this case Appellant's ownership of its leases and the production of gas therefrom is not a right derived or enjoyed

by Appellant under and by virtue of any statute under attack in this case. The statute in question is merely a regulatory statute limiting such right.

Furthermore, the attack in this case is not leveled against anything inherent in the original statute itself but against the subsequent vague, indefinite, arbitrary, unwarranted and otherwise unconstitutional action of the Commission as applied to this Appellant under the facts and circumstances here present.

The fact that the principles relied upon by Appellees do not apply to a later unconstitutional order made pursuant to some earlier statute is conceded by Appellees at page 16 of their brief, wherein they say, "Of course, if the Commission, in requiring Appellant to take ratably, had fixed the price so high as to entail loss upon it or prevent it from making a profit, it would not be precluded by its acceptance of the statute from asserting that the order deprives it of property without due process * * *". The same would be true of any other constitutional objection to the order itself.

It is in connection with this same discussion that Appellees are again confused as to the nature of the order in question. They, at the bottom of page 16 and the top of page 17 of their brief, talk of the statute and order as requiring Appellant "to take ratably" and dealing with some price to be paid by Appellant in connection therewith. At page 17 they say, "But at present we are concerned only with the power to require ratable taking". As before stated, the position of Appellant as a producer does not involve any problem of ratable taking or of the payment by it of any price for gas so taken. The amount of gas it is allowed to produce is fixed by other orders of the Commission. It pays no one a price for its own gas.

Reply to Proposition III

Appellant does not in this case challenge the power of the State under proper facts and circumstances within the reasonable exercise of the police power to constitutionally fix the price of gas. Its objection goes to the uncertainty of the order and the absence of facts and circumstances indicating a reasonable relationship between the order and the accomplishment of the statutory purpose. Hence the cases cited by Appellees have no application.

It is under this proposition, in support of and as justifying an exercise of such power, that Appellees cite the 1920 order of the Corporation Commission fixing the price to be paid for gas in the Cushing field, cite the dissenting opinion in the case of *Republic Natural Gas Company* v. *State*, 334 U. S. 62, and talk about the "monopolistic price control by the long line gas companies". As before stated, the 1920 order of the Commission was one directed against a public utility in respect to prices paid by it to the producer for gas. The order in the *Republic* case was against the purchaser. The "monopolistic" conditions alleged by Appellees to exist are all on the part of the purchaser. All this may be of interest and have a bearing on an order directed against or the exercise of control over the purchaser, such as Order No. 19515 as against Cities Service Gas Company, but in no way supports an order such as Order No. 19514 directed against the producer and not the purchaser.

Reply to Proposition IV

Appellees' Proposition IV, in answer to the charge that Order No. 19514 is invalid because of being vague, indefinite and uncertain, wholly ignores the argument advanced by Appellant under its Point I.

The findings of Order No. 19702 may have the effect of clarifying Order No. 19514 to the extent of saying that it is

not necessary that the gas be sold at the wellhead, but wholly leaves unanswered the question as to how a producer who does not sell its gas at the wellhead, and particularly where the gas is not sold in its natural state, is to know in advance if and when it is getting the "equivalent" of the prescribed "price" "at the wellhead."

The questions in this regard are fully set out in our principal brief. Appellees offer no answer.

In fact, Order No. 19702 adds to the vagueness and uncertainty of the original order inasmuch as it talks in terms of "the equivalent of *approximately* 7 cents" per MCF at the wellhead. It does not define or otherwise let Appellant know what would be "approximate." We refer the Court to Appellant's response to Appellees' motion to dismiss in this case wherein we analyzed the evidence in regard to what the Appellant was receiving for the residue and other by-products of its gas at the time Order No. 19702 was entered and the confusion that results in respect to the uncertainty of the word "approximately."

Cases cited by Appellees all have to do with standards in a statute in connection with the delegation of authority to some administrative agency, which present an entirely different question. In those cases the uncertainty of the standards has only to do with the action, power and authority of the administrative agency, a State body having a degree of discretion in its exercise of authority under the statute. The statutes there involved are not self-executing and the private citizen is affected only after the administrative agency has acted. Such cases involve no element of penalty on the part of a private citizen for the violation of the indefinite statute.

In this case, however, the Appellant is faced with a final self-executing order prescribing certain rules of conduct, the violation of which is subject to severe penalties without

any discretion on the part of Appellant in respect to the interpretation thereof. Appellant must in advance guess if and when it is or is not in violation of the order.

Reply to Proposition V

Appellees' Proposition V shows how meager is the evidence in support of so drastic an order in this case. They cite no evidence other than that referred to in the brief of Appellant. Reference is made to Point II of Brief of Appellantf or further consideration thereof.

Absent entirely is any evidence of actual waste. Absent entirely is any evidence as to what the supposed relationship is between price and conservation. Absent entirely is any evidence of violation of correlative rights other than the alleged drainage by Cities Service Gas Company of gas from under leases of Peerless Oil and Gas Company several miles distant from the properties of Appellant.

The price in this case was not fixed because of any overwhelming public interest as was done in the case of *Nebbia* v. *New York*, 291 U. S. 502, and like cases, or for the protection of the "correlative rights" of the several owners of a common source of supply, but was solely for the economic advantage of Peerless Oil and Gas Company and the Royalty Owners. The case falls clearly within the principles announced in the cases of *Thompson* v. *Consolidated Gas Utilities Corporation*, 300 U. S. 55; *Tyson & Brother—United Theatre Ticket Officers* v. *Banton*, 273 U. S. 418; *Williams* v. *Standard Oil Company*, 278 U. S. 235; *Wolff Packing Co*, v. *Court of Industrial Relations*, 262 U. S. 522; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262; *Ribnik* v. *McBride*, 277 U. S. 350; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504; *Sterling Refining Co.* v. *Walker*, 165 Okl. 45, 25 P. 2d 312, cited in Appellant's principal brief.

Reply to Proposition VI

Appellant in its principal brief has not pressed its assignment of error relating to the subject matter of Appellees' Proposition VI and hence a reply thereto is unnecessary.

Reply to Proposition VII

If there is any merit in Points I and II set out in Brief of Appellant and in what has hereinbefore been said, then the order in question is an unlawful infringement of property rights of Appellant in violation of the Due Process clause of the United States Constitution with the result that a substantial federal question is involved. If there is no merit in such position then, of course, Appellant must lose its appeal on the merits and not because no federal question is involved.

The validity of Order No. 19514 was drawn in question in the court below on the ground of its being repugnant to the Constitution and laws of the United States and the decision of that court, the highest court of the State, was in favor of its validity. Such fact and circumstances present a federal question reversible by this Court on appeal under Section 1257, Title 28, United States Code.

Conclusion

In conclusion, we respectfully submit that the judgment below should be reversed.

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No. 73

Supreme Court of the United States

OCTOBER TERM, 1950

PHILLIPS PETROLEUM COMPANY,
a corporation,
Appellant,

VERSUS

THE STATE OF OKLAHOMA, ET AL.,
Appellees.

MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF

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No. 73

Supreme Court of the United States

OCTOBER TERM, 1950

PHILLIPS PETROLEUM COMPANY,
a corporation,
Appellant,

VERSUS

THE STATE OF OKLAHOMA, ET AL.,
Appellees.

MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF

MOTION

Appellees, the State of Oklahoma, the Corporation Commission of Oklahoma, the Commissioners of the Land Office, and Peerless Oil and Gas Company, move to dismiss the appeal herein, and for cause say:

That the record does not show that appellant, Phillips Petroleum Company, is or will be injured or affected by the orders of the Corporation Commission numbered 19514 and 19515, and it therefore has no standing to question the correctness of the decision of the Oklahoma Supreme Court holding said orders constitutional and valid and refusing to vacate or annul them.

STATEMENT

The proceeding was instituted before the Corporation Commission on October 12, 1945, by Peerless Oil & Gas Company against Cities Service Gas Company, to require the latter to take gas ratably from Peerless' wells in the Guymon-Hugoton field in Texas County, Oklahoma, at a price and basis of measurement to be prescribed by the Commission. The application also prayed a general order fixing the price to be paid by all purchasers of natural gas in that field (R. 31).

Art. IX, Sec. 18, Okla. Const., provides that, before any order shall be made against any company by name, it shall be given at least 10 days' notice of the time and place when and where the contemplated action will be considered and determined, and that before any general order, not directed against any company by name but having general application, shall be made, notice shall be given by publication not less than once a week for four consecutive weeks in a newspaper published in the capital city; and Title 52, Sec. 241, Okla. Stat. 1941, makes substantially the same provision.

In this case personal notice was served upon Cities, and, as respects the general order prayed for, notice was published in Oklahoma City and also in Texas County, in which the gas field is located, and proof of publication was duly made (R. 40, 41). Later the State on relation of the Commissioners of the Land Office intervened, alleging that it owned large tracts of land producing gas in that field, and praying a general order fixing the price of gas therein at 10 cents per MCF (R. 171). Upon that application, on

June 19, 1946, the Commission again gave notice to all companies operating or taking gas in that field, including appellant by name (R. 174); and, on June 25, 1946, it gave notice to all such operators, purchasers and takers of the setting of the cause for hearing (R. 176).

Appellant made no appearance at any time during the hearing of those applications. The hearing resulted, on December 9, 1946, in the making of orders No. 19514 (R. 11) and 19515 (R. 19), to become effective on January 1, 1947.

On January 17, 1947, appellant filed an application with the Commission to vacate and set aside the orders (R. 809). Notwithstanding it made no averment and offered no proof of a want of knowledge of the applications and the hearings thereon, the Commission heard its application, found that its operations and the price it was receiving for its gas in that field were not violative of the orders and that it was not injured or affected by them, and it made an order denying the application (R. 853). From that order appellant appealed to the State Supreme Court, which affirmed the order.

BRIEF AND ARGUMENT

Phillips buys no gas in the Hugoton field in Oklahoma (R. 830). It transports its own gas from its leases in that field to its gasoline extraction plant in Hansford County, Texas, there extracts from it the gasoline (R. 827-30), butane, propane, butadiene and other valuable hydrocarbons (R. 842-43), and sells the residue to Panhandle Eastern Pipe Line Company under a twenty-year contract dated April 5, 1943 (R. 861), at a price of 4.67

cents per MCF during the first five years of the contract (R. 833 and 844) increased by ½ cent per MCF at the end of each five years (R. 880). The hydrocarbons taken from the gas are utilized and sold at a profit (R. 849). It recovers six-tenths of a gallon of liquid from each thousand cubic feet treated, totaling from 78 to 80 thousand gallons daily, of which 46 or 47 thousand gallons are gasoline and the remainder is propane, butane, and butadiene (R. 842-43). The gasoline sells for from 5 to 5½ cents per gallon and the other products at more than 2 cents per gallon (R. 849).

Appellant appeals only as to Order No. 19514, which is a general order, and as to that portion of Order No. 19515 which has general application. The challenged provision of each is as follows:

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead of less than 7 cents per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

In its application (R. 809) it alleged that it owns leases and is a substantial producer of gas in that field, but is neither a common carrier nor a common purchaser of gas therein. Its application was conditioned upon whether the orders were "intended to apply to applicant in the situation described above" (par. 6, subd. [e] and [f]); and it prayed that the Commission set aside so much of the orders as "applies to applicant", or that it "make an order amending, modifying and supplementing said order, ex-

cluding from its terms and provisions the production of gas not sold in its natural state, or where not sold at the well, and clarifying said orders in their application to the production of gas not so sold."

After a hearing the Commission found that Phillips "is now realizing from the natural gas produced in the Guymon-Hugoton Field the equivalent of 7 cents per M cu. feet at the wellhead within the terms and meaning of Orders 19514 and 19515"; "that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7 cents per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold that the producer would realize therefrom the equivalent of 7 cents per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon-Hugoton Field the equivalent of 7 cents per thousand cubic feet at the wellhead on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515"; "that applicant herein, Phillips Petroleum Company, is not injured by the application of a 7 cents price for all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time" (R. 853; 855-56).

The Commission thus clarified the orders "in their application to the production of gas not sold" at the well-head and in their application to appellant, as prayed; and held that the orders did not forbid the utilization of the gas that appellant was making, that its operations were not in violation thereof, and that the orders permitted it to carry on its operations as theretofore, without let or hindrance. It expressly held that appellant was not injured by the orders.

The orders thus clarified and interpreted give appellant no ground of complaint. Its operations are not affected by them.

The only possible basis for a claim of injury to appellant is that the effect of the orders is to increase its royalty obligation to its lessors or royalty owners. But that contention cannot be successfully made for two reasons. One is that appellant laid no basis for such a contention and never made it below and has not made it here; and the second is that the orders do not have that effect.

That contention was not made in appellant's application to the Commission to vacate the orders or in its petition in error in the Supreme Court. And it has not been made here. It was not the subject of a decision by either the Commission or the Court. In neither appellant's application nor in its petition in error did it mention its royalty owners or its royalty obligations. It introduced none of its leases in evidence, nor did it introduce any evidence as to their terms and provisions, other than the fact that some of its witnesses testified that it paid its royalty owners 1/8th

of the 4.67 cents per MCF which it received for the gas from Panhandle Eastern.

There are any number of forms of leases. Some of them provide that the lessee will deliver to the lessor ⅛th of the gas in kind, with the option on the lessee's part to purchase the same at the market price. Others make no provision for delivering any of the gas to the lessor but provide that the lessee will pay the lessor ⅛th of the price for which the lessee sells the gas. And still others provide for a fixed cash sum per annum for each gas well.

Under the first form of lease, if the lessee exercises its option to purchase the lessor's share of the gas, it could possibly be held to be purchasing gas at the wellhead. Under the second form, the lessee owns all the gas, and the ⅛th of the price received for it which it pays to the lessor as royalty is a consideration for the lease and not the price of gas purchased from the lessor. It is analogous to a farm rental. In such case, and also under the third form, the lessee in and by his lease purchases the right to go upon and drill the land and produce and appropriate all the gas, and the sums payable to the lessor thereunder constitute the consideration agreed upon for that right, and is not a purchase of gas after its production.

—*Serena* v. *Rubin*, 146 Kans. 603, 72 Pac. (2d) 995, 998;

Bellport v. *Harrison*, 123 Kans. 310, 255 Pac. 52;

Kissick v. *Bolton*, 134 Iowa 650, 112 N. W. 95;

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Hazeltine Corp. v. *Zenith Radio Corp.*, (C. C. A.), 100 Fed. (2d) 10, 16;

Commissioner of Internal Revenue v. *Affiliated Interprises* (10 C. C. A.), 123 Fed. (2d) 665, 668;

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Robinson v. *Milam*, 124 W. Va. 218, 24 S. E. (2d) 236, 240;

Rathbun v. *Williams*, 154 Kans. 600, 121 Pac. (2d) 243, 245.

This Court, however, can not take judicial knowledge of those various forms of leases. If it could, still it cannot judicially know which form of lease appellant has. And there are an infinite number of variations in the consideration clauses of gas leases.

Appellant, therefore, laid no basis for such a contention.

Moreover, the orders do not purport to change the terms and provisions of the gas leases, or to increase the lessee's obligation to its royalty owners. That that is true as to appellant is shown by the Commission's finding that its operations are in conformity with the provision of the

orders and that it is no. injured. The purpose of the orders is to prevent waste, physical and economic, and to protect the correlative rights of lessees and producers. If in any case its effect should be to increase the amount payable to a royalty owner, that would be only incidental and the result of the contract between him and his lessee. Many gas leases provide for the payment as royalty of a fixed sum per well per annum, and in such event the order would not affect the royalty owner either directly or indirectly.

It is uniformly held that a party can question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage; otherwise, he has no litigable interest in the question.

—*Massachusetts* v. *Mellon*, 262 U. S. 447;

Rindge Co. v. *Los Angeles*, 262 U. S. 700;

Brown-Forman Co. v. *Kentucky*, 217 U. S. 563;

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282;

Red River Valley National Bank v. *Craig*, 184 U. S. 548.

The constitutionality of a statute or of an administrative order made pursuant thereto cannot be questioned by a party whose rights are not affected by it.

—*George Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373;

Frank L. Young Co. v. *McNeill-Edwards Co.*, 283 U. S. 398;

Columbus & G. Ry. Co. v. *Miller*, 283 U. S. 96;

Utah Power & Light Co. v. *Pfost*, 286 U. S. 165;

Roberts & Shaefer Co. v. *Emmerson*, 271 U. S. 50;

First National Bank v. *Louisiana Tax Commission*, 289 U. S. 60;

Gorieb v. *Fox*, 274 U. S. 603.

A person attacking a state statute as violating the constitution must show that the alleged unconstitutional feature injures him (*Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226).

One whose rights under a war risk policy in a certain form are not disturbed by subsequent legislation affecting its terms, cannot complain thereof (*Lynch* v. *United States*, 292 U. S. 571; *Wilner* v. *United States*, id.).

The constitutionality of the Grain Futures Act giving a commission power to exclude from all contract markets persons violating the provisions of the act or attempting to manipulate market prices, will not be determined in a suit for injunction where the plaintiff does not aver that he is committing acts subjecting him to such exclusion, or that charges have been made and proceedings begun against him, or that proceedings are about to be begun (*Board of Trade of City of Chicago* v. *Olsen*, 262 U. S. 1).

An insurance company receiving just compensation under a statute, cannot attack its constitutionality because competitors could not make reasonable profit (*Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440).

There are many other authorities to the same effect, but the foregoing are sufficient. What appellant seeks

from this Court is, not the determination of an existing controversy between it and the appellees affecting its rights adversely, but a declaratory judgment with respect to a situation that has not arisen and may never arise.

It is submitted that the appeal should be dismissed.

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No. 73

Supreme Court of the United States

October Term, 1950

PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,
VERSUS
THE STATE OF OKLAHOMA *et al.*,
Appellees.

Appeal from the Supreme Court of the State of Oklahoma

BRIEF OF APPELLEES

FLOYD GREEN,
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OCTOBER, 1950.

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No. 73

Supreme Court of the United States

October Term, 1950

PHILLIPS PETROLEUM COMPANY, a corporation,

Appellant,

VERSUS

THE STATE OF OKLAHOMA; THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; PEERLESS OIL AND GAS COMPANY, a corporation; COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA; TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, and CITIES SERVICE GAS COMPANY, a corporation,

Appellees.

Appeal from the Supreme Court of the State of Oklahoma

BRIEF OF APPELLEES

Herein, Phillips Petroleum Company, a corporation, will be referred to as "Phillips"; Cities Service Gas Company will be referred to as "Cities"; the Corporation Commission of Oklahoma will be referred to as "Commission"; the Peerless Oil & Gas Company will be referred to as "Peerless"; and the Guymon-Hugoton Gas Field will be referred to as "Hugoton Field."

Where emphasis is used in quotations, the emphasis will be ours unless otherwise noted, and where figures in parenthesis are used, they will refer to the printed record.

STATEMENT OF THE CASE

These proceedings were commenced by the filing with the Commission of an application by Peerless for an order requiring the Cities to make a connection to two wells owned by Peerless, and to take natural gas ratably from said two wells. The application further prayed that the Commission fix the terms and conditions of the taking of natural gas from said two wells, including the price at which said gas should be taken. The application further prayed that the Commission fix the price for natural gas for the entire Hugoton Field. Notice of the hearing was duly given as provided by law.

After many days of hearings, the Commission issued its Order No. 19514, a copy of which is attached to this Brief and marked Appendix "A," fixing a price of 7¢ per 1,000 cubic feet for all natural gas produced in the Hugoton Field and prohibiting the production of natural gas where such gas was to be sold at the wellhead, at a price less than 7¢ per 1,000 cubic feet. Said order further provided that the gas be measured at a pressure of 14.65 pounds absolute pressure per square inch.

Pursuant to this application, the Commission also issued its Order No. 19515, fixing the terms and conditions

upon which the Cities should take gas from the two wells in question. A copy of said order is attached to this Brief and marked Appendix "B."

During the pendency of the proceedings, Peerless and Cities had, by stipulation, agreed that Cities would make a connection to the two wells and take gas ratably upon such terms and conditions as might thereafter be fixed by the Commission. During the pendency of the proceeding, the Commissioners of the Land Office and the Texas County Royalty Owners Association intervened in the proceeding and were made parties thereto.

On December 9, 1946, after exhaustive hearings, the Commission issued the two orders complained of. The orders by their terms became effective as of January 1, 1947.

Thereafter on January 7, 1947, Phillips filed its "Application to Modify Orders Numbered 19514 and 19515." Pursuant to a hearing on this application, the Commission issued its Order No. 19702 on February 4, 1947, denying Phillips' application. Attached to this Brief and marked Appendix "C" is a copy of this order.

The Supreme Court of Oklahoma consolidated the appeals of Phillips and Cities for the purpose of briefing and oral argument, and thereafter handed down its opinion in the consolidated cases. A copy of said opinion is attached hereto and marked Appendix "D."

From the opinion of the Supreme Court of Oklahoma, Phillips has appealed to this Court, being Case No. 73 of

the October, 1950 term, and Cities has likewise appealed to this Court in Case No. 153 of the October, 1950 term.

Since the questions involved in the two appeals are similar, appellees in this case adopt the statement of the case, set forth in Brief of appellees in the Cities case. Likewise appellees adopt the condensed statement of the evidence found in the Brief of appellees in the Cities' appeal and in addition thereto further discuss the evidence under Proposition No. 5 in this Brief.

ARGUMENT AND AUTHORITIES

PROPOSITION I

The Supreme Court of the United States is bound by the interpretation placed upon the state statute by the Supreme Court of the state.

The statutes of the State of Oklahoma construed by the Supreme Court of the State of Oklahoma in its opinion (895), for the convenience of this Court are set out as follows:

The Natural Gas Act of 1913, Title 52, O.S.A., Sections 231 to 233, inclusive, read as follows:

Section 231:

> "All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owner or gas lessees, of the surface under which gas is located in its original state." (Laws 1913, Ch. 198, p. 439, Sec. 1).

Section 232:

"Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. *The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well.*" (Laws 1913, Ch. 198, p. 440, Sec. 2).

Section 233:

"Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas." (Laws 1913, Ch. 198, p. 440, Sec. 3).

The 1915 Ratable Taking Act, Title 52, O.S.A., Sections 239, 240 and 243, read as follows:

Section 239:

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. *The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.*" (Laws 1915, Ch. 197, Sec. 4).

Section 240:

"Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to

purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. *It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas,* or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. *The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.*" (Laws 1915, Ch. 197, Sec. 5).

Section 243:

"*The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas,* and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, *and to make such other rules and regulations,* and to employ or appoint such agents, with the consent of the Governor, *as may be necessary to enforce this Act.*" (Laws 1915, Ch. 197, Sec. 8).

The opinion of the Supreme Court of Oklahoma interpreted the above sections of the Oklahoma statute as authorizing the Commission to "fix the price at which natural gas may be produced and taken from the field under the circumstances and in the manner therein stated," and held that said statutes in authorizing the Commission to prevent waste, protect the interests of the public and all those

having a right to produce therefrom, "by necessary implication, includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes, and includes the power to fix the price consideration in the taking of gas when found necessary to the attainment of such ends."

Thus the Supreme Court of Oklahoma has held that the statutes hereinabove set out are sufficiently broad to authorize the State of Oklahoma through its regulatory agency, to fix the price of natural gas produced, and taken from a natural gas field, and to fix a unit of measurement for such taking.

This Court in a long line of decisions, has established the rule to be that the interpretation of the state statutes by the Supreme Court of the State is binding upon this Court.

In *Klinger* v. *State of Missouri*, 80 U.S. 635, 637, this Court said:

> "Where it appears by the record that the judgment of the state court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the federal question, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one."

In *Patterson* v. *People of the State of Colorado*, 205 U.S. 454, 461, this Court said:

"But, in general, the decision of the court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the 14th Amendment merely because it is wrong or because earlier decisions are reversed."

In *King* v. *State of West Virginia*, 216 U.S. 92, 100, this Court said:

"But the construction and effect of that decree, how far it bound the state, and whether or not it bound parties subsequently coming in, were matters of state procedure alone. The cases remained within the jurisdiction of the state court, and if, by local practice, the lower or higher court had power to change an earlier decree in the cause by direct order, or indirectly, by construction, which latter we by no means intimate was done, it is a matter that cannot be complained of here. See *Patterson* v. *Colorado*, 205 U.S. 454, 460, 51 L. ed. 879, 880, 27 Sup. Ct. Rep. 556, 10 A. & E. Ann. Cas. 689."

In *A., T. & S. F. Ry. Co.* v. *Railroad Commission of the State of California*, 283 U.S. 380, 390, this Court said:

"The decision of the state court is conclusive so far as the constitution and laws of the state are concerned. The state Commission has acted within the power conferred upon it. The only questions before us are those arising under the Federal Constitution and the Interstate Commerce Act."

In *Quong Ham Wah Company* v. *Industrial Accident Commission*, 255 U.S. 445, 448, this Court said:

"To reverse the judgment so rendered this writ of error is prosecuted. All the assignments and contentions made rest in their last analysis upon the assumption that, despite the construction of the statute made by the court below, it still must be here treated as repugnant to the Constitution because operating the

discrimination originally complained of. But it is elementary that this court is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the state.

> "*Commercial Bank* v. *Buckingham*, 5 How. 317, 342, 12 L. ed. 169, 181;
>
> *Johnson* v. *New York Life Ins. Co.*, 187 U.S. 491, 496, 47 L. ed. 273, 275, 23 Sup. Ct. Rep. 194;
>
> *Ross* v. *Oregon*, 227 U.S. 150, 162, 57 L. ed. 458, 463, 33 Sup. Ct. Rep. 220, Ann. Cas. 1914C, 224;
>
> *Ireland* v. *Woods*, 246 U.S. 323, 330, 62 L. ed. 745, 750, 38 Sup. Ct. Rep. 319;
>
> *Stadelman* v. *Miner*, 246 U.S. 544, 62 L. ed. 875, 38 Sup. Ct. Rep. 359;
>
> *Erie Ry. Co.* v. *Hamilton*, 248 U.S. 369, 371, 372, 63 L. ed. 307, 308, 39 Sup. Ct. Rep. 95.

"It is hence obvious that the proposition upon which alone jurisdiction to entertain the writ can be based is so wanting in foundation as to be frivolous, and therefore to impose upon us the duty to dismiss the cause for want of power to entertain.

> "*Farrell* v. *O'Brien (O'Callaghan* v. *O'Brien)*, 199 U.S. 89, 100, 50 L. ed. 101, 107, 25 Sup. Ct. Rep. 727;
>
> *Goodrich* v. *Ferris*, 214 U.S. 71, 79, 53 L. ed. 914, 917, 29 Sup. Ct. Rep. 580;
>
> *Toop* v. *Ulysses Land Co.*, 237 U.S. 580, 583, 59 L. ed. 1127, 1128, 35 Sup. Ct. Rep. 739;
>
> *Sugarman* v. *United States*, 249 U.S. 182, 184, 63 L. ed. 550, 551, 39 Sup. Ct. Rep. 191;

Berkman v. United States, 250 U.S. 114, 118, 63 L. ed. 877, 884, 39 Sup. Ct. Rep. 411;

Piedmont Power & Light Co. v. Graham, 253 U.S. 193, 64 L. ed. 855, 40 Sup. Ct. Rep. 453."

In *Brinkerhoff-Faris Trust & Savings Company v. Hill*, 281 U.S. 673, 680, this Court said:

"It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on Federal questions;

"*Kryger v. Wilson*, 242 U.S. 171, 176, 61 L. ed. 229, 231, 37 Sup. Ct. Rep. 34;

Mt. St. Mary's Cemetery Assn. v. Mullins, 248 U.S. 501, 503, 63 L. ed. 383, 386, 39 Sup. Ct. Rep. 173;

Quong Ham Wah Co. v. Industrial Accident Commission, 255 U.S. 445, 448, 65 L. ed. 723, 724, 41 Sup. Ct. Rep. 373;

Fox River Paper Co. v. Railroad Commission, 274 U.S. 651, 655, 71 L. ed. 1279, 1283, 47 Sup. Ct. Rep. 669,

"and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this court.

"*Central Land Co. v. Laidley*, 159 U.S. 103, 112, 40 L. ed. 91, 94, 16 Sup. Ct. Rep. 80;

Patterson v. Colorado, 205 U.S. 454, 461, 51 L. ed. 879, 880, 27 Sup. Ct. Rep. 556, 10 Ann. Cas. 689;

Willoughby v. *Chicago*, 235 U.S. 45, 50, 59 L. ed. 123, 126, 35 Sup. Ct. Rep. 23;

O'Neil v. *Northern Colorado Irrig. Co.*, 242 U.S. 20, 26, 27, 61 L. ed. 123, 128, 129, 37 Sup. Ct. Rep. 7;

Dunbar v. *New York*, 251 U.S. 516, 519, 64 L. ed. 384, 385, 40 Sup. Ct. Rep. 250;

Rooker v. *Fidelity Trust Co.*, 261 U.S. 114, 118, 67 L. ed. 556, 563, 43 Sup. Ct. Rep. 288;

Tidal Oil Co. v. *Flanagan*, 263 U.S. 444, 450, 68 L. ed. 382, 385, 44 Sup. Ct. Rep. 197;

American Ry. Exp. Co. v. *Kentucky*, 273 U.S. 269, 71 L. ed. 639, 641, 47 Sup Ct. Rep. 353."

See also:

Williams v. *Kaiser*, 323 U.S. 471;

International Union, U. A. W., A. F. of L. Local 232, 336 U.S. 245;

Oklahoma Tax Comm. v. *Texas Company, and Oklahoma Tax Comm.* v. *Magnolia Petroleum Company*, 336 U.S. 342;

S. R. A., Inc. v. *State of Minnesota*, 327 U.S. 558.

It therefore seems that it is now a settled rule of law that this Court is bound by the interpretation of the Oklahoma Statutes placed thereon by the Supreme Court of the State. Our Supreme Court specifically held that Title 52, O.S.A., Sec. 233, *supra*, gave the Commission authority to fix the price at which natural gas may be produced and taken from the Hugoton Gas Field under the circumstances and in the manner stated in the order of the Commission. The Supreme Court further held that 52 O.S.A. 239, *supra*, granted the Commission power,

> "* * * to prevent waste, protect the interest of the public and all of those having a right to produce therefrom, * * *,"

which power by necessary implication included the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes and included the power to fix the price consideration in the taking of gas when found necessary to the attainment of such ends. In this case the Commission specifically found in its orders that waste was being committed because of the low price for which natural gas was being sold and that discrimination was being practiced in the field in which there was a hodge podge of prices being paid by various purchasing companies.

We suggest that this Court is bound by the interpretation of the order of the Commission and of the statutes of the State of Oklahoma made by the Supreme Court of our State in its opinion in this case.

PROPOSITION II

By entering the state and there engaging in the business of buying and holding gas leases, drilling and operating gas wells, all after the enactment of the statutes, which conditioned its right to do that business in the state, appellant accepted the terms and provisions of those statutes, and is therefore barred from questioning their constitutionality.

Appellant is a foreign corporation. Oklahoma had the right for any reason or without reason to prohibit it from doing any but an interstate business therein.

Asbury Hospital v. *Cass County*, 326 U.S. 207;

Wheeling Steel Corp. v. *Glander*, 337 U.S. 562;

Hanover Fire Insurance Co. v. *Carr*, 272 U.S. 494;

St. Clair v. *Cox*, 106 U.S. 350;

Hemphill v. *Orloff*, 277 U.S. 537;

Orient Ins. Co. v. *Daggs*, 172 U.S. 557;

State of Washington ex rel. v. *Superior Court*, 289 U.S. 361,

or to prescribe the conditions upon which it could do so.

Lincoln Nat. Life Ins. Co. v. *Read*, 325 U.S. 673;

Horn Silver Min. Co. v. *New York State*, 143 U.S. 305;

Connecticut Mutual Life Ins. Co. v. *Spratley*, 172 U.S. 602;

Paul v. *Virginia*, 8 Wall. 168;

Hanover Fire Ins. Co. v. *Carr*, *supra*;

Lafayette Ins. Co. v. *French*, 59 U.S. 404;

St. Clair v. *Cox*, *supra*;

Orient Ins. Co. v. *Daggs*, *supra*;

Atlantic Refining Co. v. *Virginia*, 302 U.S. 22.

As to appellant, Oklahoma prescribed those conditions in 1913 and 1915. After the enactment of the Acts, Phillips entered the State, obtained a permit, and commenced the business of acquiring, holding and drilling gas leases, producing gas, and taking gas from a gas field.

That constituted an acceptance of the conditions upon which that privilege was granted, and appellant is exercis-

ing the privilege today. It has acquired and owns leases upon large tracts of land in the Hugoton field and in other fields of the State. It has drilled and is drilling wells thereon, and has produced and is producing gas therefrom, all being acts which the State had the right to forbid a corporation, either foreign or domestic, from doing, or to prescribe the conditions upon which they could do them.

In *The Pipe Lines Cases*, 234 U.S. 548, this Court held that the Hepburn Act, though not compelling existing corporations engaged in interstate transportation of oil to continue in operation, nevertheless forbade them to continue to transport oil purchased by them from others except as common carriers; and as to pipe lines constructed after the passage of that Act, the Court said at Page 561:

> "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."

Also, in *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U.S. 125, 128, this Court said:

> "By accepting the privilege it (appellant) voluntarily consented to be bound by the conditions attached to it, and, while enjoying the benefits of that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the state, is unconstitutional."

That holding has been cited and followed in many cases.

See:

United States v. *Traugott Schmidt & Sons* (D.C.), 2 Fed.(2d) 290;

Dunn v. *Fort Bend County et al.* (D.C.), 17 Fed. (2d) 329;

Eichholz v. *Hargus et al.* (D.C.), 23 Fed. Supp. 587;

Valvoline Oil Co. v. *United States*, 25 Fed. Supp. 460;

Henderson v. *Twin Falls County*, 59 Ida. 119, 80 Pac. (2d) 801, 810;

Byard v. *Commissioner of Taxation*, 209 Minn. 219, 296 N.W. 10;

Louisiana Ry. & Nav. Co. v. *State* (Tex. Civ. App.), 298 S.W. 462, 467;

Assessment of Champlin Refining Co., 129 Okla. 166;

Fitzsimmons v. *Rauch*, 195 Okla. 529, 532.

If appellant had expressly contracted with the State that, in consideration of its admission, it would recognize and conform to those statutes, unquestionably it could not attack their validity. An implied contract, however, is equally binding, and appellant's acceptance and exercise of the privilege granted upon the conditions embodied in the statutes constituted such implied contract and effectually estops it.

That means that appellant cannot question the constitutionality of the acts, requiring it to take ratably, and authorizing the Commission to fix the price therefor.

Of course, if the Commission, in requiring appellant to take ratably, had fixed the price so high as to entail loss upon it or prevent it from making a profit, it would not be precluded by its acceptance of the statutes from assert-

ing that the order deprives it of property without due process, any more than a public utility, under an admitted duty to serve and whose rates are subject to regulation, is precluded from attacking a rate fixed as confiscatory. But at present we are concerned only with the power to require ratable taking. Order No. 19702 by the Commission finds that the appellant is complying with the price provisions of Orders Numbered 19514 and 19515.

PROPOSITION III

A state may constitutionally fix a price for natural gas.

In the opinion (895), appealed from in this case, our court held:

> "3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.
>
> "4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power, to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other."

The State of Oklahoma has for many years under its police power exercised supervisory control over the production of oil and gas in Oklahoma and statutes enacted for that purpose have been uniformly upheld.

In re: Lovell Crescent Field, Logan County, Oklahoma, 178 Pac.(2d) 876;

Peppers Refining Company v. *Corporation Commission*, 179 Pac.(2d) 899;

Carey, Rec. v. *Corporation Commission*, 33 Pac.(2d) 788;

Oklahoma Natural Gas Company v. *Corporation Commission et al.*, 216 Pac. 917;

Oklahoma Natural Gas Co. v. *State*, 161 Okla. 104, 17 Pac.(2d) 488;

Republic Natural Gas Co. v. *State et al.*, 180 Pac.(2d) 1009;

Russell v. *Walker et al.*, 160 Okla. 145, 15 Pac.(2d) 114;

In re: Application of Jackson et al., 179 Okla. 577, 66 Pac.(2d) 1101;

Pierce Oil Corporation v. *Phoenix Refining Co. et al.*, 79 Okla. 36, 190 Pac. 857;

Croxton v. *State*, 186 Okla. 249, 97 Pac.(2d) 11;

Patterson Oil & Gas Company v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 Pac.(2d) 83;

H. F. Wilcox Oil & Gas Co. v. *State*, 169 Okla. 89, 19 Pac.(2d) 347;

Grison Oil Corp. v. *Corporation Commission et al.*, 186 Okla. 548, 99 Pac.(2d) 134.

And beginning with *Ohio Oil Company* v. *Indiana*, 177 U.S. 190, the Supreme Court of the United States has in

a long line of decisions upheld the jurisdiction of the various States to regulate the oil and gas industry in the prevention of waste, the protection of correlative rights of the interested parties and the protection of the public interests.

Champlin Refining Company v. *Corporation Commission of Oklahoma et al.*, 286 U.S. 210;

Pierce Oil Corporation v. *Phoenix Refining Co.*, 259 U.S. 125;

The Pipe Line Cases, 234 U.S. 541;

Bandini Petroleum Co. v. *Superior Court of the State of California*, 284 U.S. 7, 76 L. ed. 136;

Patterson v. *Stanolind Oil & Gas Company*, 305 U.S. 375, 83 L. ed. 231;

Hunter v. *McHugh*, 320 U.S. 22, 88 L. ed. 5;

Thompson v. *Consolidated*, 300 U.S. 55, 81 L. ed. 510;

Republic Natural Gas Co. v. *State*, 334 U.S. 662, 92 L. ed. 1212.

This Court said in *Republic Gas Company* v. *State et al.*, 334 U.S. 62, in an opinion by four Justices of this Honorable Court, and agreed to in principle by a fifth Justice, as follows at Page 94:

> "* * * In a line of cases beginning a half century ago with *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190, 44 L. ed. 729, 20 S. Ct. 575, this court has upheld various types of state regulatory schemes designed to prevent waste and to protect the 'co-equal rights' of the several owners of a common source of supply. Those cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights."

This opinion further held that the State could require the Republic Natural Gas Company to pay the Peerless Oil & Gas Company for the gas drained from underneath Peerless' leases and certainly if the State could require payment for drainage, then it would have jurisdiction to fix the price of the gas that was drained. If it could have fixed the price of gas in that instance then surely it has the right in this instance to fix the field-wide price for gas, and the Supreme Court of Oklahoma in its opinion in the instant case said:

> "We think it is clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under such terms as the parties may agree upon; or in default of agreement, to take upon such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.
>
> "The Commission's order, made under the provisions of Sec. 233, *supra*, directing that Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken at not less than 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

"In 1915 provision was made for regulation of the extraction of natural gas not only to prevent excessive drainage as between producers but for the prevention of waste and for the protection of the interest of the public and the interest of all those having a right to take from a common reservoir.

"It was provided, Laws 1915, Ch. 197, § 4, 52 O.S. 1941, § 239, that when the full production from a common source of supply of natural gas is in excess of the market demands, a producer from such common source of supply may take therefrom only such proportion as may be marketed without waste, and in such proportion as the natural flow of the well or wells of such producer bears to the total natural flow of the field, having due regard to the acreage drained by each well; provided that the Corporation Commission may permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The statute provides that 'the said commission is authorized and directed * * * to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one source of supply as against another."

The Commission has long exercised its power of fixing prices at which natural gas may be produced and taken (see opinion in the record, Page 895). As early as 1920 after the prescribed notice and hearing, the Commission fixed the price of 9¢ per MCF for gas in the Cushing Field, and in 1944, acting specifically in view of the national emergency, the Commission, after notice and hearing, authorized the taking of natural gas for the manufacture of carbon black and fixed the price to be paid for the gas so

produced and used, and it was specified that the continued effectiveness of the permit should depend upon the maintaining of the fixed price. Jurisdiction to fix the price of natural gas has been exercised ever since the passage of the 1913 Natural Gas Act, and the 1915 ratable taking statute.

The language used by this Court in interpreting the Federal Natural Gas Act is of some assistance to us in determining whether or not the State of Oklahoma has jurisdiction to fix the price of natural gas before it passes through the processing plants and enters into the interstate pipe line.

In *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690, this Court held as follows:

> "In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the states powers of regulation in areas in which the states are constitutionally competent to act. * * * clearly, among the powers thus reserved to the states is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern."

In a most recent case, being *Panhandle Eastern Pipe Line Company* v. *Public Service Commission of Indiana*, 332 U.S. 507, this Court held that said State regulation was not precluded by the enactment of the Natural Gas Act, and said at Page 521:

> "Congress' action moreover was an unequivocal recognition of the vital interests of the states and their

people, consumers and industry alike, in the regulation of rates and service. Indiana's interest in appellant's direct sales is obvious. That interest is certainly not less than the interest of California and her people in their protection against the evil effects of wholly unregulated sale of insurance interstate. *Robertson* v. *California*, 328 U.S. 440, 90 L. ed. 1366, 66 S. Ct. 1160. Not only would industrial consumers in most instances go without protection as to rates and service other than that supplied by competition from other fuels, but the state's regulatory system would be crippled and the efforts of the Indiana Commission seriously hampered in protecting the interests of other classes of users equally if not more important.

"These considerations all would lead to the conclusion that the states are not made powerless to regulate the sales in question by any supposed necessity for uniform national regulation but that on the contrary the matter is of such high local import as to justify their control, even if Congress had remained wholly silent and given no indication of its intent that state regulation should be effective. But in this case, in addition to those considerations taken independently, the policy which we think Congress has clearly delineated for permitting and supporting state regulation removes any necessity for determining the effect of the commerce clause independently of action by Congress and taken as operative in its silence."

In the light of the foregoing decisions it is said without question that the production and distribution of natural gas is a business more affected with the public interests than the production and distribution of milk or raisins, yet in respect to these two commodities this Court has held price fixing Acts and regulations to be valid.

In *Nebbia* v. *New York*, 291 U.S. 502, this Court upheld an Act passed by the State of New York, which

conferred jurisdiction upon a regulatory board of that State to fix the price of milk under certain conditions. In discussing the types of businesses that are affected with the public interest this Court said at Page 510:

> "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. As Chief Justice Marshall said, speaking specifically of inspection laws, such laws for 'a portion of that immense mass of legislation, which embraces everything within the territory of a state. * * * all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws for regulating the internal commerce of a state. * * * are component of this mass.' "

This Court further said:

> "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. *Regulation of a business to prevent waste of the state's resources may be justified.* And statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency.
>
> "Legislation concerning sales of goods, and incidentally affecting prices, has repeatedly been held valid. In this class fall laws forbidding unfair competition by the charging of lower prices in one locality than

those exacted in another, by giving trade inducements to purchasers, and by other forms of price discrimination. The public policy with respect to free competition has engendered state and federal statutes prohibiting monopolies, which have been upheld. On the other hand, where the policy of the state dictated that a monopoly should be granted, statutes having that effect have been held inoffensive to the constitutional guaranties. Moreover, the state or a municipality may itself enter into business in competition with private proprietors and thus effectively although indirectly control the prices charged by them."

In *Parker, Director of Agriculture et al.* v. *Brown*, 317 U.S. 341, this Court was considering the jurisdiction of the State of California to fix the price of raisins which were to be shipped in interstate commerce. In discussing this question the Court said at Pages 359-360:

"* * * This court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. *Minnesota Rate Cases*, 230 U.S. 352, 399-400; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177, 187, *et seq.*; *California* v. *Thompson*, 313 U.S. 109, 113-114 and cases cited: *Duckworth* v. *Arkansas*, 314 U.S. 390. * * *

* * * * *

"In applying the mechanical test to determine when interstate commerce begins and ends (see *Federal Compress Co.* v. *McLean*, 291 U.S. 17, 21 and cases cited; *Minnesota* v. *Blasius*, 290 U.S. 1 and cases cited) this Court has frequently held that for purposes of local taxation or regulation 'manufacture' is not interstate commerce even though the manufacturing process is of slight extent. *Crescent Oil Co.* v. *Mississippi*, 257 U.S. 129; *Oliver Iron Co.* v. *Lord*, 262 U.S. 172;

Utah Power & Light Co. v. *Pfost*, 286 U.S. 165; *Hope Gas Co.* v. *Hall*, 274 U.S. 284; *Heisler* v. *Thomas Colliery Co.*, 260 U.S. 245; *Champlin Refining Co.* v. *Commission*, 286 U.S. 210; *Bayside Fish Co.* v. *Gentry*, 297 U.S. 422. And such regulations of manufacture have been sustained where, aimed at matters of local concern, they had the effect of preventing commerce in the regulated article. *Kidd* v. *Pearson*, 128 U.S. 1; *Champlin Refining Co.* v. *Commission, supra; Sligh* v. *Kirkwood*, 237 U.S. 52, see *Capitol City Dairy Co.* v. *Ohio*, 183 U.S. 238, 245; *Thompson* v. *Consolidated Gas Co.*, 300 U.S. 55, 77; *cf. Bayside Fish Co.* v. *Gentry, supra.* A state is also free to license and tax intrastate buying where the purchaser expects in the usual course of business to resell in interstate commerce. *Chassaniol* v. *Greenwood*, 291 U.S. 584. And no case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce."

And further in the body of the opinion this Court said at Page 366:

"This history shows clearly enough that the adoption of legislative measures to prevent the demoralization of the industry by stabilizing the marketing of the raisin crop is a matter of state as well as national concern, and in the absence of inconsistent Congressional action, is a problem whose solution is peculiarly within the province of the state. In the exercise of its power the state has adopted a measure appropriate to the end sought. The program was not aimed at nor did it discriminate against interstate commerce, although it undoubtedly affected the commerce by increasing the interstate price of raisins and curtailing interstate shipments to some undetermined extent. The effect on the commerce is not greater, and in some instances was far less, than that which this Court has held not to afford a basis for denying to the states the

right to pursue a legitimate state end. *Cf. Kidd* v. *Pearson, supra; Sligh* v. *Kirkwood, supra; Champlin Refining Co.* v. *Commission, supra; South Carolina Highway Dept.* v. *Barnwell Bros., supra,* and cases cited at p. 189 and Notes 4 and 5; *California* v. *Thompson, supra,* 113-15, and cases cited."

Certainly, if a State acting through its regulatory agency may fix the price of raisins in the interest of protecting a local industry, then a State may lawfully fix the price of natural gas, a commodity in which all classes of people are interested. We think these cases settle the question that there is no violation of the Federal Constitution in the fixing of a wellhead price for natural gas in the Guymon-Hugoton Field. Certainly the State has a right to protect its natural resources and to protect the public interests, and certainly the natural gas business is "affected with the public interests"; and since it is affected with the public interests, we think that the fixing of a uniform price is in the interest of the public good.

The larger portion of the Hugoton Gas Field is in Kansas and the Regulatory Agency of that State has recently fixed a price of 8¢ per thousand cubic feet at the wellhead of gas produced in the Kansas portion of the Hugoton Field. The Supreme Court of Kansas, early in October, 1950, upheld the order and a copy of the opinion in full is attached hereto as Appendix "E." As further evidence of the public's interest in fixing the price of gas at the wellhead, we invite this Court's attention to that opinion.

Generally, gas is discovered in the search for oil. Oil may be marketed in a number of ways, but gas may only be marketed by a sale to a long line gas company. Such a connection will not usually be made unless the producer enters into a contract which dedicates all of the producer's gas to the purchasing company for the life of the reserves. A competitive situation as to price does not exist in respect to gas fields. It exists in respect to oil fields. Monopolistic price control by the long line gas companies is inherent in a gas field without common agreement of the companies and arises out of the conditions peculiar to the transportation of gas to those willing to buy for consumption. Justice Rutledge briefly discussed this situation in *Republic Natural Gas Company* v. *State*, 334 U.S. 62, and said at Page 91:

> "Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for conveyance to them from the well mouth. The competitive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monopoly once success has been achieved in a particular field."

Our court, in the opinion appealed from herein, said:

> "It is readily conceivable that in the course of development of a particular gas field, the ownership of producing and marketing facilities might become such, or be so combined, as to permit monopolistic practices. Under the circumstances prices for gas might be established having no relation to the market value of gas prevailing throughout the natural gas industry, and

in other fields of commensurate development costs, and having no relation to the market value of other natural resources and products in competitive usage. On the other hand, a like result might obtain from economic warfare between competing producers and marketers. Under either of such circumstances prices might be so reduced that landowners or royalty holders or particular leaseholders would have their interest in the gas exhausted, dissipated and taken, without having received any reasonable compensation, and each suffer waste of a valuable reversion."

Independent of the public interest premise which has been presented in this portion of the Brief as justification for the fixing of a sale price for gas, it seems to us that the monopolistic character of the business itself is sufficient justification for the action of the State. If it is thus within the authority of the State to so act, is not the question closed by our court's interpretation of the statutes.

"They easily demonstrate that some combination of 'capital, skill or acts' is necessary to any business development, and that the result must inevitably be a cessation of competition. But this does not prove that all combinations are inviolable, or that no restriction upon competition can be forbidden. To contend for these extremes is to overlook the difference in the effect of actions, and to limit too much the function and power of government. By arguing from extremes almost every exercise of government can be shown to be a deprivation of individual liberty. *It is commonplace to say that it is the purpose, and indeed duty, of government, to get all it can of good out of the activities of men, and limit or forbid them when they become or tend to evil.* Of course, what is evil may not be always clear; but to be able to dispute the policy of a law is not to establish its invalidity. It is certainly the conception of a large body of public opinion

that the control of prices through combinations tends to restraint of trade and to monopoly, and is evil. The foundations of the belief we are not called upon to discuss, nor does our purpose require us to distinguish between the kinds of combinations or the degrees of monopoly. It is enough to say that the idea of monopoly is not now confined to a grant of privileges. It is understood to include a 'condition produced by the acts of mere individuals.' "

If the constitution permits or does not prohibit the regulation of a commodity price it seems that for many reasons natural gas stands at the head of the list of such commodities.

PROPOSITION IV

The Order and Statute are not vague, indefinite, and uncertain.

It seems strange to appellees that appellant raises the question that the order issued in this instance is vague, indefinite and uncertain.

After notice and many days of hearings, the Commission issued its Orders Numbered 19514 and 19515 appealed from in this case. Appellant has stipulated (968), that, "parties acknowledge timely and proper service was made of all processes and notices required to be served or given." Appellant did not see fit to enter an appearance in this cause wherein said Orders Numbered 19514 and 19515 were issued. Thereafter in the same case the appellant filed an application to stay the effectiveness of the order as it applied to the appellant, and after notice and hearing

the Commission issued its Order No. 19702, which is found as Appendix "C" to this Brief. In denying appellant's application to vacate its Orders Numbered 19514 and 19515, the Commission specifically found as follows:

> "4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers, and takers of gas in the field; that the applicant herein, Phillips Petroleum Company is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did

not see fit to introduce any evidence as to profits or losses from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

"5. That applicant complains that Paragraph 1 of Order No. 19514 and Paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

"6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14,65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform

price for the field. is permitting discrimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses of one of Oklahoma's most valuable resources.

"7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

"8. That this application should be denied in the interest of preventing: (a) economic waste of a great natural resource to-wit: natural gas, (b) actual physical waste of natural gas in the Hugoton Field, (c) loss to the producers and royalty owners in said field, (d) loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission, (e) the inequitable taking of natural gas from the common sources of supply owned by all; (f) discrimination as to prices paid throughout the field, which discrimination adversely affects many royalty owners and producers; (g) the inefficient and wasteful utilization of natural gas."

This order is plain and unambiguous and appellees see no reason why appellant is unable to construe Order No. 19514 in view of the interpretation placed thereon by Order No. 19702, *supra*. It will be noted that the Com-

mission specifically found that appellant was already complying with Order No. 19514 in that it was realizing from the sale of gas produced by it "approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Numbered 19514 and 19515." This interpretation of Order No. 19514 was made by the Corporation Commission of Oklahoma the same regulatory agency, that issued said Order No. 19514 and within a very few days after the issuance thereof. The appellant herein was at the time of the issuance of Order No. 19702 gathering its gas in the Hugoton Field from its various wells, transporting same to a processing plant just outside of the State of Oklahoma, and after extracting certain hydrocarbons therefrom, was selling the residue to the Panhandle Eastern Pipe Line Company under a contract (861). From an examination of the contract, it will be found that Section 12 (882) thereof provides that the terms and provisions of said contract were made subject to the future exercise of the police power of the regulatory agency having jurisdiction of the parties. Moreover all contracts are subject to proper regulations issued pursuant to the police power of the State. If there is any doubt in the interpretation of Order No. 19514, then the same regulatory agency that issued the order is available to this appellant for the purpose of clarifying said order on a proper application.

The question as to whether or not the statute interpreted by the Supreme Court of our State is vague, in-

definite and uncertain, is settled by the opinion of our court in this case. Appellant urged this proposition there, and our court found that the orders were not vague, indefinite and uncertain.

In *Patterson* v. *Stanolind Oil & Gas Company*, 182 Okla. 155, 77 Pac.(2d) 83 (for disposition on appeal, see 305 U.S. 376), it was urged that the well spacing statute was vague, indefinite and uncertain in that it prescribed no standard by which the Commission should be governed and in passing on that question the Supreme Court of Oklahoma said at Pages 161-162, 77 Pac.(2d) 83, 91:

> "The best manner of well-spacing or a criterion by which this might be arrived at could not be anticipated or prescribed in advance of the opening of an oil field because of the difference between the conditions in one field and those in another and the variability of the effect which such conditions have upon the objects to be obtained. The impossibility of fixing a definite standard for the administration and enforcement of oil and gas conservation measures has been given great weight in the judicial determinations of their validity in other jurisdictions. See *Brown* v. *Humble Oil & Refining Co.*, *supra*, and *People* v. *Associated Oil Co.*, 211 Cal. 93, 294 P. 717. In the latter of these cases, the court was considering the validity of a statute for the prevention of the waste of natural gas. With reference to the contention that the standard set forth in said act was objectionable on account of its vagueness and uncertainty, the court said: 'Therefore, because of the many and varying conditions peculiar to each reservoir and to each well, which will bear upon a determination of what is a reasonable proportion of gas to the amount of oil produced, it may be said that it would be impossible for

the Legislature to frame a measure based on ratios or percentages or definite proportions which would operate without discrimination, and that what is a reasonable proportion of gas to the amount of oil produced from each well or reservoir is a matter which may be ascertained to a fair degree of certainty in each individual case.'

"In our opinion the validity of the statute in question should be tested by the rule in Volume 25 of Ruling Case Law, at Page 810, as follows:

> 'An act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it was passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith.' "

In *Mutual Film Corporation* v. *Industrial Commission of Ohio*, 236 U.S. 230, this Court had under consideration a statute providing for censorship of moving-picture films within the State. The particular section involved was quoted at Page 240:

> "SECTION 4. 'Only such films as are, in the judgment and discretion of the board of censors, of a moral, educational, or amusing and harmless character shall be passed and approved by such board.' The films are required to be stamped or designated in a proper manner."

In passing on the question there involved this Court said at Pages 245-246:

> "The objection to the statute is that it furnishes no standard of what is educational, moral, amusing, or harmless, and hence leaves decision to arbitrary judgment, whim, and caprice; or, aside from those extremes, leaving it to the different views which might be enter-

> tained of the effect of the pictures, permitting the 'personal equation' to enter, resulting 'in unjust discrimination against some propagandist film,' while others might be approved without question. But the statute by its provisions guards against such variant judgments, and its terms, like other general terms, *get precision from the sense and experience of men, and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their application would be as impossible as the attempt would be futile.* Upon such sense and experience, therefore, the law properly relies. This has many analogies and direct examples in cases, and we may cite *Gundling* v. *Chicago*, 177 U.S. 183; *Red "C" Oil Manufacturing Co.* v. *North Carolina*, 222 U.S. 380; *Bridge Co.* v. *United States*, 216 U.S. 177; *Buttfield* v. *Stranahan*, 192 U.S. 470. See also *Waters-Pierce Oil Co.* v. *Texas*, 212 U.S. 86. If this were not so, the many administrative agencies created by the state and national governments would be denuded of their utility, and government in some of its most important exercises become impossible."

In *Mahler* v. *Eby*, 264 U.S. 32, this Court considered a statute governing the deporting of undesirable aliens, and said at Page 40:

> "With the background of a declared policy of Congress to exclude aliens classified in great detail by their undesirable qualities in the Immigration Act of 1917, and in previous legislation of a similar character, we think the expression 'undesirable residents of the United States' is *sufficiently definite to make the delegation quite within the power of Congress.* As far back as 1802 the naturalization statute of that year (c. 28, 2 Stat. 153) prescribed that no alien should be naturalized who did not appear to the court to have behaved during his residence in this country 'as a man of good moral character, attached to the principles of the Constitution of the United States, and well dis-

posed to the good order and happiness of the same.' Our history has created a common understanding of the words 'undesirable residents' which gives them the quality of a recognized standard."

In *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266, this Court interpreted a statute governing radio permits. It was there contended that the language of the statute provided no definite standards, and this Court said at Page 285:

"In granting licenses the commission is required to act 'as public convenience, interest or necessity requires.' This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. Compare *N. Y. Central Securities Co.* v. *United States*, 287 U.S. 12, 24. The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services, and, where an equitable adjustment between states is in view, by the relative advantages in service which will be enjoyed by the public through the distribution of facilities. In making such an adjustment the equities of existing stations undoubtedly demand consideration. They are not to be the victims of official favoritism. But the weight of the evidence as to the equities and all other pertinent facts is for the determination of the commission in exercising its authority to make a 'fair and equitable allocation.' "

In *Schechter Corp.* v. *United States*, 295 U.S. 495, this Court said at Pages 538-539:

"Nor is the breadth of the President's discretion left to the necessary implications of this limited requirement as to his findings. As already noted, the President in approving a code may impose his own conditions, adding to or taking from what is proposed, as 'in his discretion' he thinks necessary 'to effectuate the policy' declared by the Act."

The rule is stated in 42 Am. Jur., p. 346, Sec. 45, as follows:

> "The modern tendency is to be more liberal in permitting grants of discretion to administrative authorities in order to facilitate the administration of laws as the complexity of economic and governmental conditions increases. * * * The policy of the law-making body and the standards to guide the administrative agency may be laid down in very broad and general terms *which get precision from the technical knowledge or sense and experience of men and thereby become reasonably certain.* A requirement that an act shall be 'in the public interest' has been held to be a sufficient criterion and standard where the subject matter of the statute renders this an intelligible and not limitless criterion."

In *Republic Natural Gas Co.* v. *State et al.*, 334 U.S. 62, 98, it is said:

> "For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solution to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 60 S. Ct. 1021, 84 L. ed. 1368."

It must be noted that a different rule applies where penalty provisions of a statute are being construed.

Appellant relies on the *Champlin case.* That same case was relied on in *Patterson* v. *Stanolind Oil & Gas Co., supra.* In respect to that contention, the Supreme Court of Oklahoma said:

> "This case does not invoke a consideration by us of the doctrine of uncertainty as it would be applied to penal statutes, as did the *Champlin case, supra,* in

view of the fact that plaintiff is not being proceeded against under the penal provisions of the 1933 Act."

On Page 19 of appellant's Brief, it cites from the case *Small Company* v. *American Sugar Refining Company*, 267 U.S. 233. Therein this Court refused to adopt a contention of the defendant that a contract was invalid because it was in violation of Section 4 of the Lever Act which provides that it shall be unlawful to make any unreasonable charge in dealing with any necessaries. The Court had previously held such section of the Act to be invalid in criminal prosecutions and in the *Small case* it held the Act did not invalidate contracts. The difference in the situation there confronting the Court and that which is before the Court herein is that the Lever Act did not make provision for any administrative agency to make a determination of what constitutes an unreasonable charge and there was therefore no consistent guide or standard for the determination of the rights of all parties. Herein the statutes involved, in general language authorized the Commission to make determinations, to prevent unjust discrimination and prevent waste. Such a determination was made by the Commission in the order which set the price of natural gas in the Hugoton Field at not less than 7¢ per thousand cubic feet.

In *Bowles* v. *Willingham*, 321 U.S. 503, this Court considered the Price Control Act. One of the questions raised was that the Act was unconstitutional because it was an unlawful delegation of authority to an administrative of-

ficer and did not set up any standards by which the administrative officer was to enforce the Act. In effect this Court held that there may be a zone for the exercise of the discretion of an administrative officer "where Congress has prescribed the general standard and has left to him the determination of the precise situation to which the statute will be applied." Further that the exercise of such power is not unconstitutional because the Act provides merely that the orders of the administrator shall be "generally fair" and equitable without providing that they shall be fair and equitable as to each particular landlord.

In *Bandini Petroleum Company* v. *Superior Court*, 284 U.S. 8, this Court was construing the statute enacted by the State of California which prohibited "unreasonable waste" of natural gas. No standards were provided by which unreasonable waste could be determined and the Supreme Court of the State of California construed said statute as being sufficiently broad to prohibit the production of natural gas without its lifting power having been utilized to produce the greatest quantity of oil in proportion. In determining whether or not this statute was vague, indefinite and uncertain, the Court stated the appellants' position as follows at Page 13:

> "The appellants contended, in substance, that the statute violated the due process clause of the 14th Amendment in that it afforded no certain or definite standard as to what constituted 'waste' or 'unreasonable waste' and unlawfully delegated power to the Superior Court to legislate upon that subject; in that,

upon the facts and as applied against the appellants, the statute prohibited them 'from utilizing such amount of natural gas produced from their respective wells' as was 'reasonably necessary to produce oil therefrom in quantities not exceeding a reasonable proportion to the amount of oil produced from the same well;' and in that the statute required appellants to curtail their production of oil and gas 'for the purpose of conserving such natural gas for the benefit of the general public' without eminent domain proceedings and without just compensation, and was so arbitrary and oppressive that it was in excess of the power of the State."

This Court then quoted from the Supreme Court of California as follows at Page 16:

> "It is estimated that only from ten to twenty-five per cent of the total amount of oil deposited in a reservoir is ultimately recovered, depending on the natural characteristics of the reservoir and the methods employed in utilizing the lifting power of the gas. The importance of gas in the oil-producing industry has, therefore, become a question of great concern to the industry itself and to government, to the end that its function may be fully utilized without waste."

In concluding, in as much as the Supreme Court believed the simple standard of prohibition of waste to be an adequate working standard for the California courts, this Court said at Page 18:

> "The statute is to be read with the construction placed upon it by the state court. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 73, 55 L. ed. 369, 375, 31 S. Ct. 337, Ann. Cas. 1912C, 160. And so read, we find no ground for concluding that the statute should be regarded as invalid upon its face, merely by reason of uncertainty, so as to deprive the Superior Court of jurisdiction to consider the relevant questions of fact and to determine with respect to a particular

field whether or not there has been the unreasonable waste of gas which the statute condemns. *Nash* v. *United States*, 229 U.S. 373, 377, 57 L. ed. 1232, 1235, 33 S. Ct. 780; *Miller* v. *Strahl*, 239 U.S. 426, 434, 60 L. ed. 364, 368, 36 S. Ct. 147; *Omaechevarria* v. *Idaho*, 246 U.S. 343, 348, 62 L. ed. 763, 767, 38 S. Ct. 323; *Hygrade Provision Co.* v. *Sherman*, 266 U.S. 497, 502, 69 L. ed. 402, 407, 45 S. Ct. 141."

Surely, if a statute such as this may be upheld as being definite and certain, then the Oklahoma statute should be upheld as being broad enough to confer jurisdiction upon the Corporation Commission to fix the price of natural gas in the Guymon-Hugoton Field when it says (Sec. 233, Title 52, O.S.A.) as follows:

> *"Any person, firm or corporation, taking gas from a gas field, except for the purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas"* (Laws 1913, Ch. 198, p. 440, Sec. 3),

and when the statute further said (Sec. 239, Title 52, O.S.A. 1941):

> *"The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and*

of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another" (Laws 1915, Ch. 197, Sec. 4),

and when it further said (Sec. 240, Title 52, O.S.A. 1941):

"The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade" (Laws 1915, Ch. 197, Sec. 5).

As this Court said in *Bandini Petroleum Company* v. *Superior Court, supra,* "in determining the constitutionality of the state law it is to be read with the construction placed upon it by the state court." In this case the Supreme Court of the State of Oklahoma has interpreted the statutes complained of by appellant as being sufficiently broad to confer jurisdiction upon the Corporation Commission to fix the price of natural gas in Oklahoma. The order issued pursuant to such statutes was likewise approved. Appellant only has difficulty in interpreting the order.

PROPOSITION V

The Order appealed from is not arbitrary, unjust or unreasonable.

The Commission, after notice to appellant devoted some 17 days to hearing the application wherein Order No. 19514 was issued. A brief review of the evidence will

disclose that the order was not arbitrary, unjust or unreasonable.

KENNETH ELLISON, an independent consulting geologist from Oklahoma City, testified (72-74), that the pressure on the Peerless well located in Section 8, had declined from May 2, 1945 to May 3, 1946, from 427 pounds per square inch to 419.5 pounds per square inch, thus indicating that there had been drainage of natural gas from underneath said section without such gas having been produced by the well located on the section. He further testified (74) that the wells directly to the west of Section 8 were draining the natural gas from underneath said section. He then testified (77) that the well owned by Peerless Oil & Gas Company in Section 8 had already suffered drainage in the amount of $24,835.00, assuming the wellhead price to be 4¢ per 1,000 cubic feet. He then testified (78) that the drainage of the wells owned by Peerless was occasioned by the fact that the Cities Service wells are the nearest wells to the Peerless well and are the ones that are causing the drainage. Incidentally, this testimony is not refuted anywhere in this record by the Cities Service Gas Company.

WILLIAM D. WEINDLEIN, a consulting engineer of St. Paul, Minnesota, testified (96) as to his qualifications as an engineer and as to his experience in the gas business. He testified (118) that the fair price for natural gas at this time in the Guymon-Hugoton Field was 6¢ per 1,000

cubic feet on a 2-pound base or about 6½¢ on a 14.65-pound base. He then testified that the price now being paid in the Guymon-Hugoton Field (from 3.6¢ to 5¢ per 1,000 cubic feet of gas on a 2-pound base), constituted economic waste. He was of the further opinion (119) that that price had a definite relationship to conservation and that the fixing of a higher price than that being presently paid would be conducive to and assist in the conservation of natural gas. He then stated (120) that that statement had some limitation and that the top price for natural gas in the field should be 9¢ per 1,000 standard cubic feet of gas of 1,000 to 1,005 BTU's per cubic foot. In other words, any price lower than 9¢ would not be conducive to conservation of natural gas and any price above 9¢ in his opinion would not result in any increased conservation practices.

M. L. MAYFIELD of Houston, Texas, testified (150) that he was a registered petroleum and natural gas consultant; that he was a graduate of the University of Oklahoma; had been employed by the Slick Oil Company, Empire Oil Company, Cities Service Oil Company, and as chief petroleum engineer for the Cotton Valley Operators Committee which committee operated the Cotton Valley Pool, which is presently being recycled and operated under a plan of unitization. He was technical advisor and engineer to the Natural Gas and Natural Gasoline Committee of the Petroleum Administrator for War for District No. 3

during the war. He also testified for the State of Texas as an expert witness in Docket G-580 conducted by the Federal Power Commission, when that Commission was making an exhaustive survey of the natural gas reserves, prices and practices during the years 1945 and 1946. He made tests of the character of the natural gas in the Guymon-Hugoton Field as to the component parts of such gas and was familiar with the productive history in that field. He further testified (155) that he had made a study of the intrinsic value of dry natural gas as compared to the value of other sources of fuel on the basis of BTU content. He stated (157) that the intrinsic value of 10¢ per 1,000 cubic feet of natural gas at the wellhead equals $1.54 per ton of coal and that the price of natural gas was so low as to be, in some cases, almost a token price; that the heating value of 6,000 cubic feet of gas was approximately equal to a barrel of oil and that oil was worth approximately $2.00 per barrel. Using Kansas City as a point of comparative prices, with coal at $4.50 per ton and fuel oil at $1.18 per barrel, that natural gas in the Guymon-Hugoton Field is worth in excess of 19¢ to 20¢ in Kansas City and that after allowing nominal transportation costs, the intrinsic value of natural gas in the Guymon-Hugoton Field is well in excess of 10¢ per 1,000 cubic feet. He then testified (161) that in his opinion natural gas in the Guymon-Hugoton Field at the wellhead is worth 10¢ per 1,000 cubic feet and comparing it to fuel oil and heating

value in the Guymon-Hugoton Field, the natural gas is worth 20¢ at the wellhead. In his opinion (163) the present depressed price of natural gas in the Guymon-Hugoton Field was caused by the major pipe line companies owning large blocks of acreage in the pool and those not having pipe line outlets being forced to accept whatever price was offered them by the major companies, or else sit idly by and watch their gas being drained from underneath their land; that the law of supply and demand was not operative because of these conditions; and that it was fundamental that as things become more valuable there is more and greater effort to conserve them and that certainly there would be greater conservation of natural gas if the price was increased to 10¢ per 1,000 cubic feet. Heathen stated the present price being paid in the Guymon-Hugoton Field constitutes economic waste for the reason that the gas was being sold at a price lower than its intrinsic value and much lower than its comparative price with other fuels; that he was familiar with the purchase contracts of the field calling for gas measurement of 2 pounds above 14.4 pounds per square inch, and that the atmospheric pressure in the Guymon-Hugoton Field was 14.4 pounds per square inch; that by using a different unit of measurement for measuring the gas, the purchasing companies were acquiring approximately 11% more gas than they were paying for since the sale price of natural gas at the other end of the line was not based on 14.4 plus 2 pounds.

ROSS PIERCE testified (203) that he was employed by the School Land Commission as head of the Oil and Gas Division; that the Commissioners of the Land Office owned 49,600 acres of land in Texas County, 30,160 acres of which were under lease contract; and that the Commissioners of the Land Office owned 6,099.92 acres that were productive of gas at this time; that the Commissioners of the Land Office were being paid as royalty on the basis of 4¢ for gas at the wellhead, and in some instances on the basis of 5¢ at the wellhead, and that the Phillips Petroleum Company was offering to pay them 3.34 cents for their portion of the natural gas at the wellhead upon that acreage covered by leases to the Phillips Petroleum Company.

W. D. MCBEE testified (185) that he was employed by the Commissioners of the Land Office and had made an investigation of the comparative prices of natural gas with coal.

MR. MAYFIELD was then recalled to the stand for the purpose of explaining some of the exhibits prepared by Mr. McBee, since Mr. Mayfield was an expert in these matters. He testified (188) that the average BTU content of natural gas in the Guymon-Hugoton Field was 1,000 BTU's per cubic foot of gas produced where the gas was measured at 14.735 pounds per square inch. He testified (189) that coal worth $5.31 per ton was equal to 23 cents

per 1,000 cubic feet of natural gas in the Guymon-Hugoton Field and that coal at $7.35 per ton f.o.b. McAlester was equal to 27¢ per 1,000 cubic feet for natural gas; that coal worth $5.35 per ton at Henryetta was equal to 20.3¢ per 1,000 cubic feet of gas.

ERNEST C. ARNOLD, supervisor of oil and gas operations in Osage County for the Federal Government, testified (200) that the Cities Service Gas Company was paying 18¢ per 1,000 cubic feet for natural gas from certain leases in Osage County and had been paying that amount for many years.

WALKER T. POUND testified (278 and following pages) that he was oil and gas conservation officer of the Oklahoma Corporation Commission, and had been employed in that capacity since December 1, 1942; and prior to that time had served about seven years as deputy conservation officer; that prior to that time he had been engaged in the oil and gas business in one way or another and that he had made "a detailed study of the oil and gas industry in connection with production and transportation of natural gas"; that he made this study (281) with particular attention to its conservation and the things that lead to and result in good conservation and poor conservation practices, and that said study included the Guymon-Hugoton Natural Gas Field. He testified (282) in answer to a direct question as to the relationship of price to the prevention of waste, as follows:

"My opinion is that the price at which gas is sold at the wellhead has a very direct relationship to the prevention of the waste of gas, and conversely, to its conservation. I think a low field price automatically results in waste."

He then testified (283) as follows:

Q. "What in your opinion, should the price be, the minimum price, in the Guymon-Hugoton Field, for natural gas, at the wellhead, in order that the waste of natural gas as a natural resource be prevented and the conservation of the same promoted?

A. My opinion is that gas, in the Guymon-Hugoton Field, in order to prevent waste, should not sell for less than 10 cents per 1,000 cubic feet."

He testified (284) that there was waste in the Guymon-Hugoton Field by everybody who is producing it in that it is sold for less than it is worth and thereby the royalty owner, the State of Oklahoma and its citizens suffer a loss. He then testified that there is some venting of gas in the course of drilling wells and that there would be no venting if the price was such as to justify the conservation of natural gas.

Cities Service which was the principal objector at the hearing, did not see fit to refute any of the testimony as to comparative values or as to the value of natural gas at the wellhead or that gas was being vented in the field because of the low price being paid for same. They contented themselves with showing that the gas was being sold from 3.334¢ per 1,000 cubic feet to 5¢ per 1,000 cubic feet, and attempted to establish a "going price" for

gas in the field by showing the weighted average price. Nowhere in the record is it contended by anyone that discrimination is not being practiced by the hodge-podge prices that prevail in this field. The record is replete with testimony that shows that the prices paid throughout the field are those prices at which the purchasers desire to buy and that the producers, royalty owners, Commissioners of the Land Office and other interested parties have no choice in the matter other than to accept the prices offered by the purchasing pipe lines or suffer the gas to be drained from underneath their leases without being allowed to produce same. Therefore there is ample testimony in the record to justify the issuance of both Orders Numbered 19514 and 19515, see Appendix "A" and "B", fixing a minimum price below which gas may not be produced in the Guymon-Hugoton Field. We see no reason why the State of Oklahoma in the protection of its citizens, should not be allowed to fix a price of natural gas in the Guymon-Hugoton Field. The appellant Phillips Petroleum Company should be the last person to claim the unreasonableness of the order since the Corporation Commission has already found (see Appendix "C") that the Phillips Petroleum Company is now complying with the order in that it is realizing from the sale of its produced gas, approximately 7¢ per 1,000 cubic feet. The testimony shows, in this case, that the Phillips Petroleum Company, while realizing approximately 7¢ per 1,000 cubic feet, is attempting to settle with its royalty owners

on the basis of 3.34¢ per 1,000 cubic feet for the 1/8 interest owned by the royalty owners. It has tendered to the School Land Commission which owns thousands of acres of royalty, division orders which provide that the School Land Commission shall receive from Phillips Petroleum Company 3.34¢ per 1,000 cubic feet for its 1/8 portion of the gas produced from the lands owned by the School Land Commission. It occurs to appellees that in view of Order No. 19702 there is nothing left to do in order to be in compliance with Order No. 19514 except to pay its royalty owners their 1/8 share of the value of all gas produced by Phillips.

The fact that the Phillips is a producer and gatherer of natural gas and does not sell its gas at the wellhead is no barrier to the Phillips complying with the order. As stated before, if this order needs clarification, the Phillips may file an application with the Corporation Commission for an order clarifying the order as it relates to that company.

Where is there any unreasonableness in an order that permits the producer to receive 7¢ per 1,000 cubic feet for gas produced on lands in Oklahoma, when gas in other fields in Oklahoma is being produced and sold as high as 18¢ per 1,000 cubic feet, and where gas in the Guymon-Hugoton Field is being produced, gathered, and transported to foreign markets and there sold for as high as 50¢ per 1,000 cubic feet. In fact, it seems to the appellees that it would be unreasonable for the State of Oklahoma to sit

idly by and see one of its greatest natural resources dissipated without the natural resource producing its share of revenues for the operation of the schools of Oklahoma and for the operation of the general state governments.

PROPOSITION VI

There is no discrimination as between separate common sources of supply or as between producers in the same common source of supply.

The appellant has raised the question that Order No. 19514 is discriminatory because it fixes a price for only one of several common sources of supply of natural gas in Oklahoma. Section 239 of Title 52, O.S.A. 1941, provides, among other things, as follows:

> "The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from *any or all* such common sources of supply within the state so as to prevent waste, protect the interest of the public and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one common source of supply as against another."

This language directs the Commission to regulate the taking of natural gas from "any or all" such common sources of supply within the State. In other words, there is no obligation on the Commission to make a state-wide minimum price order and the statute clearly contemplates that the Commission shall separately regulate the taking of

natural gas from the various common sources of supply. It takes no stretch of imagination to at once determine that a state-wide price for all natural gas produced in the State would in itself promote the rankest kind of discrimination as between the various pools in the State. Natural gas in Oklahoma is produced from wells varying in depth from 500 to 12,000 feet, and the cost of producing gas varies in each separate common source of supply in the State. An order fixing a state-wide price would have to be high enough to permit each well to produce economically and this in itself, would require that instead of a 7¢ price, the economic conditions involved would require a price three times higher than that in certain deep pools in Oklahoma. The consumers of natural gas in Oklahoma and in other states which use Oklahoma gas, would certainly be discriminated against in any state-wide field price.

The Corporation Commission of Oklahoma deals with these problems from day to day and is familiar with the regulatory problems of the major common sources of supply of gas in Oklahoma. It seems, therefore, the better part of wisdom, to follow the language used in the recent case of *Republic Natural Gas Company* v. *State et al.*, 334 U.S. 62, 98, wherein it is said:

> "For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solution to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 60 S. Ct. 1021, 84 L. ed. 1368."

Classifications, based on differences in conditions do not violate the equal protection clause of the Constitution, and it would be violative of such clause, to fail to recognize such conditions.

The appellant has raised the question that it is being discriminated against by the application of Order No. 19514 since it does not sell its gas at the wellhead but gathers and transports same across the State line to its plant in Texas and thereafter extracts the hydrocarbons before sale is made to the Interstate Pipeline Company. It seems to urge that since the sale of gas is not made at the wellhead, then some discrimination is being practiced by the application of the order. The Corporation Commission was conversant with all these facts at the time it issued Order No. 19514 and at the time it interpreted said order by the issuance of said Order No. 19702 denying Phillips' application to modify Order No. 19514. The Commission knew that very little, if any, gas from the approximately 700 wells in the Guymon-Hugoton Field was sold at the wellhead. Contracts in evidence in this case show that the various producers in the field owning approximately all of the wells in the field all operate in the same manner that the appellant operates its properties, that is, they produce the gas from the various wells, transport same through their gathering systems to some central plant usually in the field, and there sell the gas to the Interstate Pipe Line Company, which transports same to points in Oklahoma and outside of Oklahoma. In some instances

the produeers operate their own extraction plants and then sell the gas after extracting the hydrocarbons to nearby interstate pipeline companies. In other instances, the gas is produced and then gathered by the producer and transported to the extraction plant which is owned by the interstate pipeline company and then make the sale prior to the gas being processed through the plant. Phillips, the appellant in this case, operates the same as all other producers except that it transports its gas through its gathering lines to its plant located just outside the State of Oklahoma where the gas is proceessed and then sold to the Panhandle Eastern Pipe Line Company. The effect of Order No. 19514 as applied to Phillips is the same as it is when applied to all other producers, in other words, all royalty owners and producers in the field must realize at least 7¢ per 1,000 cubic feet for their ⅛ share of the gas produced on their farms and the State of Oklahoma must realize 5% as a gross production tax on all gas produced in the Guymon-Hugoton Field, the 5% being applicable on the basis of 7¢ per 1,000 cubic feet. The Phillips, like all other producers in the field, have the option of either paying its royalty owners and paying the State of Oklahoma on the basis of 7¢ per 1,000 cubic feet or of shutting in its producing wells. If the Phillips is not realizing 7¢ per 1,000 cubic feet for all gas it produces, then its remedy is the same remedy that all other producers have and that is to renegotiate its contract with its interstate pipe line purchasers.

This order was meant to be applicable to all producers alike and as stated in Order No. 19702, it had for its purpose the fixing of a minimum price for natural gas in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers, and takers of gas in this field.

We fail to see where there is any discrimination as between the producers in the Guymon-Hugoton Field by the application of Order No. 19514, which was meant to and is applied to producers, purchasers and takers of natural gas in the field.

PROPOSITION VII

There is no substantial Federal question involved and this appeal therefore should be dismissed.

In this Brief we have demonstrated that the Federal Government has not attempted to exercise any jurisdiction over the fixing of a price for natural gas in the field and that the fixing of a price for natural gas is not repugnant to the Federal Constitution. In a long line of decisions this Court has held that the due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this Court to review the decisions of the state courts upon questions of state law.

Sayward v. *Denny* (Wash., 1895),
158 U.S. 186, 15 S. Ct. 777,
39 L. ed. 941, 943;

Central Land Co. v. *Laidley* (W. Va., 1895) 159 U.S. 103, 112, 16 S. Ct. 80, 40 L. ed. 91, 94;

Del Castillo v. *McConnico* (La., 1898), 168 U.S. 674, 683, 18 S. Ct. 229, 42 L. ed. 622, 625, 684;

Enterprise Irrigation Dist. v. *Farmers' Mut. Canal Co.* (Nebr., 1917), 37 S. Ct. 318, 243 U.S. 157, 61 L. ed. 644.

This Court has also held that when the parties have been fully heard in the regular course of judicial proceedings, the erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law.

Walker v. *Sauvinet* (La., 1876), 92 U.S. 90, 23 L. ed. 678.

See, also:

Central Land Co. v. *Laidley* (W. Va., 1895), 159 U.S. 103, 16 S. Ct. 80, 40 L. ed. 91;

Bergemann v. *Backer* (N.J., 1895), 157 U.S. 655, 15 S. Ct. 727, 39 L. ed. 845;

Morley v. *Lake Shore, etc. Ry. Co.* (N.Y., 1892), 146 U.S. 162, 13 S. Ct. 54, 36 L. ed. 925;

Head v. *Amoskeag Mfg. Co.* (N.H., 1885), 113 U.S. 9, 5 S. Ct. 441, 28 L. ed. 889.

It is therefore obvious then that a correct decision of a state court does not deprive the unsuccessful party of his property without due process of law. We are of the opinion that no substantial question is involved in this appeal and

that therefore the case should be dismissed and that the line of reasoning adopted in *Hunter Co.* v. *McHugh*, 320 U.S. 227, should be followed.

CONCLUSION

Since the questions involved herein are with others involved in the appeal of Cities in Case No. 153 of the October, 1950 term, we adopt the Brief of appellees in that case, in further answer to the Brief of Phillips filed in this case.

We think that if we are to have ratable taking of natural gas in the Hugoton Field without discrimination, this Court should uphold the opinion of the Supreme Court of Oklahoma, otherwise the "Law of the Jungle" will continue to be applied in this field, and prices, taxes and other matters of major importance will be determined by the major pipe lines who have producing properties and outlets to foreign markets. The opinion of the Supreme Court of Oklahoma is but another milestone along the road to conservation, wherein the people of the State, acting through their regulatory agency, are trying to protect a major natural resource, the people owning that resource.

For the reasons stated herein, it is respectfully submitted that the judgment of the court below should be affirmed and the appeal of Phillips should be dismissed.

Respectfully submitted,

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OCTOBER, 1950.

APPENDIX "A"

"BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

"Peerless Oil and Gas Company, a corporation, *Applicant*,

vs.

Cities Service Gas Company, a corporation, and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, *Respondents*,

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, *Interveners*.

CAUSE CD No. 1054

ORDER No. 19514

"REPORT OF THE COMMISSION

"This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10:00 o'clock a.m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent Cities Service

Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

"Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

"FINDINGS

"'1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

"2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2,810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas County, Oklahoma, covers part of the following described townships, to-wit:

TOWNSHIPS:		RANGES:
1	North	12 to 17 E.C.M.
1, 2, 3 and 4	North	12 to 18 E.C.M.
	and	
5 and 6	North	12 to 19 E.C.M.

which area may be extended by the drilling of additional wells.

"5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

"6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

"7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

"8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

"9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

"10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

"11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

"12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

"13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

"14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

"15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

"16. Cities Services Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton, Oklahoma, gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

"17. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

"13. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas and was thereafter a party in the case of *Oklahoma Natural Gas Company* v. *State*, 161 Okla. 104, 17 Pac.(2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

"19. That the operation of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

"20. A bona fide dispute has arisen between the pplicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Sections 5 and 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Sections 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

"22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of na-

tural gas at the wellhead, plus ½ ¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½ ¢ per thousand cubic feet delivered into the pipe lines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

"23. The persons and corporations operating pipe lines and transporting natural gas out of the Guymon-Hugoton, Oklahoma, gas field, own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton, Oklahoma, gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipe lines in said field or shut down their wells.

"24. There is no competitive market of natural gas in the Guymon-Hugoton, Oklahoma, oil field, but said market has been stifled by reason of the control of acreage and markets by the pipe line operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton, Oklahoma, gas field, at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

"25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton, Oklahoma, field and out of the State of Oklahoma at a price which is far less than its replacement value.

"26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

"27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton, Oklahoma, gas field, under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

"28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

"29. The operations of respondent, Cities Service Gas Company, constitute it a common carrier.

"30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

"31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

"32. The taking of natural gas from the Guymon-Hugoton, Oklahoma, field, at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

"33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

"34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"ORDER

"IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, as follows:

"1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"2. This order shall be effective as of January 1st, 1947.

"DONE AND PERFORMED by the Corporation Commission at its office in the Capitol Office Building,

Oklahoma City, Oklahoma, this 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman;*
RAY O. WEEMS, *Vice-Chairman;*
WM. J. ARMSTRONG, *Commissioner.*

ATTEST:
TOM MCMURRAY,
Secretary."

APPENDIX "B"

"BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

"Peerless Oil and Gas Company, a corporation,

Applicant,

vs.

Cities Service Gas Company, a corporation,

Respondent.

CAUSE CD No. 1054

ORDER No. 19515

"REPORT OF THE COMMISSION

"This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10 o'clock ...m., on the application of Peerless Oil & Gas Company, a corporation, as to the issues involved as between the applicant and respondent, Cities Service Gas Company, pursuant to order of the Commission setting the cause for hearing and notice published as required by law and personally served upon Cities Service Gas Company, a corporation. The applicant, appearing by and through Earl Pruet, its attorney, and the respondent, Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr.; and the Commission was represented by Floyd Green, Conservation Attorney; and said parties having announced ready for trial,

the applicant presented its evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

"Now, on this 9th day of December, 1946, the Commission having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

"FINDINGS

"1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

"2. That Peerless Oil & Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"4. The applicant is the owner of valid and subsisting oil and gas leases covering Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"5. As provided by law and the rules and regulations of the Corporation Commission, applicant filed with the Corporation Commission of the State of Oklahoma notice of its intention to drill a well in said section.

"6. Peerless Oil and Gas Company has drilled a well for the production of natural gas located in the approximate center of said section, which said well was completed, equipped and ready for production on the 2nd day of May, 1945.

"7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

"8. In producing natural gas from its said wells located in the Guymon-Hugoton, Oklahoma, gas field, Cities Service Gas Company has been, for a considerable period of time, draining natural gas from underneath said Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, said drainage having been continuous from the time of the completion of each of the wells of Cities Service Gas Company to the date of the hearing herein, and each of said wells, owned and operated by Cities Service Gas Company in the Guymon-Hugoton, Oklahoma, gas field, have drained natural gas from underneath said Section 8 Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, from the date of the completion of said Peerless Oil and Gas Company's well, on the 2nd day of May, 1945; that there has been material drainage from underneath said Section 8, practically all of which has been caused by Cities Service Gas Company.

"9. That each and all of the wells owned by Cities Service Gas Company, in the Guymon-Hugoton field, are drilled into the same common source of supply or reservoir of natural gas, into which the Peerless well hereinabove described, and has been producing and taking natural gas from such common source of supply or reservoir of gas.

"10. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field, for compensation, hire,

and otherwise, and from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

"11. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

"12. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field, and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

"13. The Cities Service Gas Company is in fact a common purchaser of natural gas.

"14. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

"15. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

"16. Cities Service Gas Company is now, and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

"17. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

"18. The sole business and operation of Peerless Oil & Gas Company in the Guymon-Hugoton, Oklahoma, gas field, is that it owns oil and gas leases covering considerable acreage in said field and has, pursuant to said leases, drilled several wells in said field, including the well above described and referred to.

"19. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton, Oklahoma, gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

"20. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1922, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

"21. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of *Oklahoma Natural Gas Company* v. *State*, 161 Okla. 104, 17 Pac. (2d) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

"22. That the operations of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

"23. That on May 17, 1945, applicant herein tendered to Cities Service Gas Company, respondent herein, the natural gas to be produced from its said well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"24. Again on June 14, 1945, applicant herein tendered to respondent natural gas to be produced from its said well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"25. Each of said tenders, the first on May 7, 1945, and the second on June 14, 1945, were legal and proper tenders of natural gas and complied in all respects with the rules, regulations and orders of the Corporation Commission of the State of Oklahoma.

"26. Cities Service Gas Company, respondent herein, after being served with said tenders and before the filing of the within suit, signified its willingness to take natural gas from said well of Peerless Oil & Gas Company, applicant herein, but refused to pay more than four cents per M. cu. ft. at the wellhead for the natural gas measured at a pressure of 16.4 pounds absolute pressure per square inch, and refused to take and purchase natural gas from said well unless Peerless Oil & Gas Company, applicant herein, would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton, Oklahoma, oil field, to Cities Service Gas Company, respondent herein, for the life of said leases at said price and measurement. There arose as a result a bona fide dispute between Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from said well of Peerless Oil & Gas Company located in said Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"27. Applicant herein is also the owner of valid and subsisting oil and gas leases covering Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"28. Pursuant to the statutes of the State of Oklahoma and the orders of the Corporation Commission, Peerless Oil and Gas Company gave notice of its intention to drill a well for the production of natural gas in the approximate center of said section.

"29. Pursuant to said notice, Peerless Oil & Gas Company drilled and completed a well for the production of natural gas in the approximate center of said

section, said well being completed in and producible from the same common source of supply as that into which the said well of Peerless Oil and Gas Company was drilled in said Section 8 and into which the wells of Cities Service Gas Company were also drilled. Said well of applicant, in said Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, was completed on or prior to January 28, 1946, and on January 28, 1946, Peerless Oil & Gas Company made a tender of the natural gas to be produced from its said well in said Section 5 to Cities Service Gas Company at a price of six cents per M. cu. ft., or in case the parties were unable to agree, at a price and under terms to be prescribed by the Corporation Commission of the State of Oklahoma.

"30. With reference to said well in Section 5, Cities Service Gas Company signified its willingness to take natural gas therefrom but refused to pay more than four cents per M. cu. ft. of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said well unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in said Guymon-Hugoton field to Cities Service Gas Company for the life of said leases.

"31. As a result thereof, a bona fide dispute has arisen between the applicant and the respondent, Cities Service Gas Company, with reference to the price, measurement and terms of taking of the natural gas to be produced from applicant's well in said Section 5.

"32. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application, when Peerless Oil & Gas Company, applicant herein, and Cities Service Gas Company, re-

spondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead plus ½ ¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½ ¢ per thousand cubic feet delivered into the pipe line of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price for natural gas and/or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil & Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

"33. The persons and corporations operating pipe lines and transporting natural gas out of the Guymon-Hugoton, Oklahoma, gas field, own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton, Oklahoma, gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipe lines in said field or shut down their wells.

"34. There is no competitive market of natural gas in the Guymon-Hugoton, Oklahoma, oil field, but said market has been stifled by reason of the control of acreage and markets by the pipe line operators in

said field, and as a result natural gas is being taken out of the Guymon-Hugoton, Oklahoma, gas field at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

"35. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton, Oklahoma, field, and out of the State of Oklahoma at a price which is far less than its replacement value.

"36. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers under contracts providing for different prices, terms and conditions.

"37. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton, Oklahoma, gas field, under contracts containing different terms and conditions, as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington & Marsh.

"38. Cities Service Gas Company is now and at all times involved herein has been engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, and in so doing is not taking natural gas for the purpose of developing a gas and oil field, or operating oil wells, or for the purpose of its own domestic use; and in so doing is draining natural gas from underneath reservoirs of another in said field, to-wit: Peerless Oil & Gas Company, applicant herein, and in so doing, Cities Service Gas Company is taking more than its proportionate share of the natural gas from said field and prevents Peerless Oil & Gas Company from taking its proportionate share of the natural gas from said field.

"39. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

"40. The operations of respondent, Cities Service Gas Company constitute it a common carrier.

"41. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

"42. The operations of respondent, Cities Service Gas Company constitute it a public utility.

"43. Cities Service Gas Company, respondent herein, should be required to take gas ratably from Peerless Oil and Gas Company's well located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, and from the well of Peerless Oil & Gas Company, located in Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, for the following reasons and purposes, any one of which is sufficient:

(a) Respondent is a common purchaser of natural gas in the field involved;

(b) Respondent is a common carrier of natural gas in said field;

(c) Respondent is a transporter of natural gas in said field;

(d) Respondent is taking and will continue to take more than its proportionate part of the natural gas in said field unless it is required to take natural gas ratably from said wells;

(e) Cities Service Gas Company is draining gas from underneath said Sections 5 and 8, into which said Peerless Oil and Gas Company's wells have been drilled, and will continue to drain gas from underneath said Sections 5 and 8 until all the gas thereunder has been drained and Peerless Oil and Gas Company will be

prevented from taking its proportionate share of the natural gas in the field unless Cities Service Gas Company is required to take gas ratably from said wells of Peerless Oil & Gas Company;

(f) Production in said field is in excess of market demand and Cities Service Gas Company should be required to take natural gas ratably from said field in order to prevent waste, protect correlative rights and prevent unreasonable drainage from the reserves of another.

"44. The taking of natural gas from the Guymon-Hugoton, Oklahoma, field, at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

"45. By reason of the findings aforesaid, this Commission has authority to require and should require Cities Service Gas Company to take and continue to take natural gas from said wells of Peerless Oil & Gas Company ratably with the other wells in the field as ratable taking is prescribed in Order No. 17867 of the Commission.

"46. By reason of the findings aforesaid and particularly by reason of the dispute between the applicant and respondent as to the price and terms of the taking of natural gas from said wells, this Commis-

sion has authority to fix and should fix the price and terms of natural gas taken and to be taken by Cities Service Gas Company from said wells of Peerless Oil & Gas Company.

"47. For the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds, absolute pressure per square inch.

"ORDER

"IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

"1. That the respondent, Cities Service Gas Company be and it is hereby required to take natural gas ratably from applicant's well located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

"2. That the respondent, Cities Service Gas Company, be and it is hereby required to take natural gas ratably from applicant's well located in Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

"3. That respondent shall pay to applicant for the natural gas so taken not less than 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch.

"4. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, for a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas, measured at a pressure of 14.65 pounds absolute pressure per square inch.

"5. This order shall be effective as of January 1st, 1947.

"DONE AND PERFORMED by the Corporation Commission, at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this the 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman;*
RAY O. WEEMS, *Vice-Chairman;*
WM. J. ARMSTRONG, *Commissioner.*

ATTEST:
TOM MCMURRAY,
Secretary."

APPENDIX "C"

"BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

"Peerless Oil and Gas Company, a corporation,
Applicant,

vs.

Cities Service Gas Company, a corporation, and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, *Respondents.*

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, *Interveners.*

CAUSE CD No. 1054

ORDER No. 19702

"REPORT OF THE COMMISSION

"This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of January, 1947, at 1:30 o'clock p.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner, sitting. R. M. Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent Peerless Oil & Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

"After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock p.m.; for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

"FINDINGS

"1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbered 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

"2. That this Commission has jurisdiction over the subject matter herein, that notice has been given

in all respects as required by law, and that protests have been filed to the granting of the order.

"3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbered 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

"4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the large percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton field, the equivalent of approximately 7¢ per thousand cubic

feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

"5. That applicant complains that Paragraph 1 of Order No. 19514 and Paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

"6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead,

measured at a pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform price for the field, is permitting discrimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton field will result in great losses of one of Oklahoma's most valuable resources.

"7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton field since it is presently realizing approximately that amount at this time.

"8. That this application should be denied in the interest of preventing: (a) economic waste of a great natural resource, to-wit: natural gas; (b) actual physical waste of natural gas in the Hugoton field; (c) loss to the producers and royalty owners in said field; (d) loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission; (e) the inequitable taking of natural gas from the common source of supply owned by all; (f) discrimination as to prices paid throughout the field, which discrimination adversely effects many royalty owners and producers; (g) the inefficient and wasteful utilization of natural gas.

"9. That this application should be denied.

"ORDER

"IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbered 19514 and 19515 heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

"DONE AND PERFORMED this the 4th day of February, 1947.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman;*
RAY O. WEEMS, *Vice-Chairman;*

ATTEST:
TOM MCMURRAY,
Secretary."
(SEAL)

APPENDIX "D"

[MAJORITY OPINION]

"IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

"Cities Service Gas Company, a corporation,
Plaintiff in Error,

vs.

Peerless Oil and Gas Company, a corporation *et al.*,
Defendants in Error.

No. 32994

Phillips Petroleum Company, a corporation,
Plaintiff in Error,

vs.

State of Oklahoma *et al.*, *Defendants in Error.*

No. 33006

"SYLLABUS

"1. The grant of power to the Corporation Commission under 52 O.S. 1941, § 239 to regulate the taking of natural gas from a common source of supply 'so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom,' by necessary implication includes the power

to employ such means as may be reasonably necessary to the accomplishment of the declared purposes and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

"2. The provisions of 52 O.S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

"3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.

"4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power, to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

"5. The Commerce clause of the Federal Constitution does not preclude the state in the production of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer there-

from will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed before the operation of interstate commerce occurs.

Appeal from Order of Corporation Commission of Oklahoma fixing a minimum price consideration in the taking of natural gas from the Guymon-Hugoton field in Oklahoma, and from order for ratable taking of gas made in favor of the Peerless Oil and Gas Company. The Cities Service Gas Company appeals. The Phillips Petroleum Company appeals.

"AFFIRMED

"Vlenn W. Clark, R. E. Cullison and Joe Rolston, Jr., Oklahoma City, Oklahoma, for Cities Service Gas Company;

Don Emery, Rayburn L. Foster, R. B. F. Hummer, Harry D. Turner and R. M. Williams, for Phillips Petroleum Company;

Earl Pruet, Oklahoma City, for Peerless Oil and Gas Company and Texas County Land Royalty Owners Assn.;

Richardson, Shartel, Cochran & Pruet, of Counsel;

Mac Q. Williamson, Floyd Green, Earl Pruet, W. D. McBee, for Defendants in Error;

Floyd Green, John Blanton, Charles F. White, for State of Oklahoma;

W. D. McBee, for Commissioners of the Land Office;

T. Murray Robinson, *Amicus Curiae;*

Robinson, Shipp & Robertson, of Counsel.

WELCH, J.,

"Peerless Oil and Gas Company, owner of a gas well and certain oil and gas leases on lands located in the Guymon-Hugoton gas field in Texas County, filed

with the Corporation Commission an application for an order requiring Cities Service Gas Company to connect its pipe line to the gas well and take and receive the natural flow of gas from the well ratably with its taking of gas from other wells of the field, and further that the Commission fix the price at which said gas should be taken and fix the price for all natural gas produced in the Guymon-Hugoton gas field in Oklahoma. Peerless alleged drainage by Cities Service and failure of agreement with Cities Service for the taking of gas from its well, and particularly a disagreement as to the price for the gas.

"Cities Service filed answer admitting its ownership of a pipe line system and that it was taking gas from the field through its lines and stated an offer to take gas from the Peerless wells ratably with its taking of gas from other wells in the field and at the average price paid for gas in the field. Cities Service alleged a usage of its pipe line in the furtherance of a business of producing natural gas for transportation and sale in interstate Commerce and asserted that the Corporation Commission was without power or authority to regulate its facility and business and, particularly, to order the price and terms for taking or purchasing gas in the field.

"After hearing of the Peerless application had commenced the Corporation Commission permitted the State of Oklahoma, on relation of the Commissioners of the Land Office, to file petition in intervention. The Land Office alleged ownership in trust for the State of a large acreage of land in the gas field and surrounding areas. It asserted that monopolistic price and arbitrary measurements for gas prevailed in the field, and was resulting in dissipation and exhaustion of gas from the common source of supply at a fraction of its intrinsic values, and that such taking was resulting in wanton economic waste. The Land Office prayed that the Corporation Commission fix a minimum price and a certain standard of measurement applicable to all gas

in the field and to be applied upon its removal from the natural reservoir.

"The Commission published notice of the time and place of a hearing to be held upon the Land Office petition, with invitation to all persons interested to appear and be heard. The notices were directed to certain named companies and to 'all operators, purchasers, and takers of gas in Oklahoma, and particularly in, Guymon-Hugoton field in Texas County, Oklahoma.

"In the course of the proceeding a petition was filed requesting the Commission to fix a minimum price for gas in the field signed by several persons as royalty owners and under a designation as members of the Texas County Land and Royalty Owners' Association.

"The Commission, after the series of hearings above mentioned, and after hearing testimony from witnesses presented by Peerless, the Land Office, Cities Service and the testimony of various other persons, entered a general order that on and after a certain future date, therein mentioned, 'no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.' The Commission issued a further order to become effective on the same date directed to Cities Service ordering that Company to take gas from the Peerless wells ratably with its taking from other wells in the field and as ratable taking is prescribed in a certain former general order of the Commission, and that Cities Service pay the Peerless for the gas so taken not less than 7¢ per thousand cubic feet wellhead price measured at a pressure of 14.16 pounds pressure per square inch.

"Subsequent to the effective date of these orders Phillips Petroleum Company filed an application to vacate or modify the price fixing provisions of the orders. After a hearing wherein evidence was intro-

duced, the Commission entered an order denying the application to vacate.

"Cities Service appeals from the two price fixing orders. Phillips appeals from these orders and from the order denying its application to vacate.

"During the pendency of the Peerless application Peerless and Cities Service entered into an agreement for a ratable taking of gas from the Peerless wells by Cities Service, leaving unsettled the price to be paid for the gas.

"The primary question presented in these appeals arises from the order of the Commission fixing a minimum price on natural gas in the field.

"Cities Service presents argument under the following statements:

'1. No constitutional or statutory power is granted Commission, either expressly or by necessary implication, to fix by general order the price or other terms for taking or purchasing natural gas in the field.

'2. 52 O.S. 1941, Section 233, purporting to authorize Commission in case of dispute to fix price and other terms for taking or purchasing natural gas as between individual parties, is unconstitutional because:

(a) It sets forth no policy or standard to guide Commission in acting thereunder (Articles IV and V, Oklahoma Constitution);

(b) It violates the equal protection clause of the Federal Constitution (Section 1, Article XIV, U. S. Constitution);

and,

(c) It violates the due process clauses of the Oklahoma and Federal Constitution (Section 7, Article II, and 14th Amendment; as well as Sections 2 and 23, Article II,

Oklahoma Constitution, and Section 59, Article V, Oklahoma Constitution).'

"3. If this Court should hold Commission under existing law is either expressly or impliedly granted natural gas price-fixing powers under some conceivable circumstances, the same are unconstitutional as applied herein because:

(a) Price fixing has no reasonable relationship to waste, protection of correlative rights, or conservation of natural resources;

(b) It casts a burden on, impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution (Clause 3, Section 8, Article 1); and,

(c) It denies Cities due process and equal protection of the law (14th Amendment, Oklahoma Constitution).

"4. If this Court should hold Commission is under present laws granted constitutional or statutory price-fixing powers, then existing laws are not self-executing but require Commission, in advance of an attempt on its part to enforce the taking or purchasing of natural gas, to specify with clarity and particularity the elements constituting the basis of such taking or purchasing so as to enable the parties concerned to effectuate fully and fairly a completed contract.

"5. If this Court should hold Commission is granted under present laws constitutional and statutory and price-fixing powers and existing laws are self-executing, then Commission in exercising its authority thereunder is confined to ascertaining and applying the going or market price and other non-discriminatory equitable terms for taking or purchasing natural gas prevailing in the field.

"6. The orders of the Commission are void because of vagueness, indefiniteness, and uncertainty.

"7. Commission erred in denying Cities' motions and demurrers;

(a) Motion to allow inspection and copy of certain records and documents of Peerless material to judicial phase of case;

(b) Demurrer, motion to dismiss, and motion for judgment in judicial phase of the case;

(c) Combined demurrer, motion to dismiss, and motion for judgment in the legislative phase of the case;

(d) Motion to set aside findings of fact and conclusions of law in order entered by Commission in judicial phase of the case and substitute therefor certain findings of fact and conclusions of law submitted by Cities and for judgment;

(e) Motion for new trial in judicial phase of the case.

"8. The findings and orders of the Commission are not supported by substantial, competent evidence and are contrary to the undisputed evidence.

"9. Commission failed to grant Cities a fair and impartial trial and hearing in accordance with the due process clauses of the Oklahoma and Federal Constitutions (Section 7, Article II, Bill of Rights, Oklahoma Constitution; Section 1, Article XIV, U. S. Constitution);

(a) By refusing to inform Cities in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

(b) By allowing the misjoinder of judicial and legislative matters;

(c) By erroneously consolidating judicial and legislative matters;

(d) By erroneously allowing Land Office to file petition in intervention and intervene in the case;

(e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

(h) By allowing Commission's conservation attorney to participate and take an active part in trial of private dispute between Peerless and Cities;

(i) By admitting incompetent and hearsay evidence and testimony;

(j) By refusing to segregate and separate the evidence of Peerless, Land Office and others at the close of their testimony so Cities could know what evidence pertained to the judicial phase of the case and what evidence pertained to the legislative phase of the case;

(k) By Commission's refusing to recognize, apply and abide by its own subsisting orders.

"Since 1913, Laws 1913, Ch. 198, Secs. 1, 2, 3, 52 O.S. 1941, Sections 231, 232, 233, the statutes of this state have provided that owners might take, from a common source, amounts of gas proportionate to the natural flow of their respective wells, but not more than 25% of that natural flow without consent

of the Corporation Commission: that any person taking gas from a gas field, except for certain specified purposes 'shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission. * * *.'

"Obviously, the protection of the interest of all owners of the gas is the intent of the statute and such is the standard of guidance to the Corporation Commission acting thereunder.

"Various types of state regulatory schemes providing for ratable taking and designed to protect the 'co-equal rights' of the several owners of common source of supply have been sustained. *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190, 44 L. ed. 729, 20 S. Ct. 576; *Bandini Petr. Co.* v. *Superior Ct.*, 284 U.S. 8, 76 L. ed. 136, 52 S. Ct. 103, 78 A.L.R. 826; *Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P. 2nd 83; *Patterson* v. *Stanolind Co.*, 305 U.S. 376, 83 L. ed. 231, 59 S. Ct. 259. In *Republic Natural Gas Co.* v. *State et al.*, 198 Okla. 350, 180 P. 2d 1009, an order of such an effect by the Corporation Commission was sustained.

"In reference to provisions of Sec. 233, *supra*, and an order of the Corporation Commission made pursuant thereto requiring producer of gas to take ratably from well of another producer in the field, it was held that a foreign corporation obtaining permission to do business and produce natural gas in this state may not question constitutionality of the statute. The decision of this court affirming the Commission was appealed to the United States Supreme Court. *Republic Natural Gas Co.* v. *State et al.*, 334 U.S. 62, 92 L. ed. 1212. That court held, in an opinion by Justice Frankfurter, that by reason of matters left open by the Commission's order, this court's judgment lacked the finality requisite to a review there. In the majority opinion

reference is made to the order of the Commission as going no further than to require ratable taking of gas and the probability that the Commission will be later asked to determine specific terms of the taking including the price to be paid for the gas. Reference is made to price fixing as being inherently provocative of constitutional claims and to the probability of additional federal question arising out of the controversy. Four members of the court joined in dissent. In a dissenting opinion by Justice Rutledge containing a discussion of the case on the merits, it is said:

> '* * * In * * * a line of cases beginning a half century ago with *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190, 44 L. ed. 729, 20 S. Ct. 575, this Court has upheld various types of state regulatory schemes designed to prevent waste and to protect the "co-equal rights" of the several owners of a common source of supply. Those cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights.'

"After stating a conclusion that a state may require ratable taking in the preservation of correlative rights in a common source of supply, it was further said:

> 'The remaining narrow issue is whether the most practical method of achieving a fair accommodation of the correlative rights of the parties is invalid because Republic is required to take and to pay for gas that it does not want—at least does not want if it must pay for it.
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> 'The fact that Republic is compelled either to purchase Peerless' gas or to carry it to market and account for the profits does not make the regulation unreasonable. If that were the sole cause for complaint, the state could take the more drastic step of requiring all the well owners to shut down completely until all were able to produce on a ratable basis or came to some agreement effective

to make this possible. It is clearly within the state's power to require Republic to compensate Peerless for the gas drained from under the Peerless land. *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U.S. 376, 83 L. ed. 231, 59 S. Ct. 259. Here, instead of requiring Republic to make a cash payment based on the estimated amount of drainage, the commission has selected what is unquestionably a more accurate method of adjusting the correlative rights. Even if it could be assumed that this method imposed a somewhat heavier burden on Republic than possible alternatives, it does not follow that the method selected by the Commission is unconstitutional. For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solutions to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission* v. *Rowan & N. Oil Co.*, 310 U.S. 573, 84 L. ed. 1368, 60 S. Ct. 1021. Keeping in mind the fact that property law is peculiarly a matter of local concern, the special difficulty of defining and regulating property rights in natural gas, the respect due to experts in this field, and the rather unusual facts this record presents, I cannot say that the state is without power to enter this order.

'It is suggested that the order, since it includes the requirement of purchase and not merely of transportation and accounting for profits, becomes invalid because it shifts from Peerless to Republic the business risk incident to ownership and sale of the gas. Possibly this might furnish a more serious basis for objection in materially different circumstances. But, apart from what has already been said, in those now presented I conceive no substantially greater harm to be possible from the order's operation, than depriving Republic of the rights to drain gas from beneath Peerless' lease without liability to pay for the gas so drained.

> 'This assumes that if the parties should be unable to agree upon terms the Commission will fix them in a manner taking due account of prevailing market conditions relevant to the price to be paid, as well as reasonable compensation for the use of Republic's facilities. With those limitations properly applied, it is hard to see what great business risk will be shifted to Republic. For, as we have already noted, the commodity is one not subject to storage, must be sold as soon as it is transported to the point of consumption, and therefore cannot be subject to possible wide fluctuation in selling price between the times of purchase and sale by Republic.'

"We think it is clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under such terms as the parties may agree upon; or in default of agreement, to take upon such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

"The Commission's order, made under the provisions of Sec. 233, *supra*, directing that Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken at not less than 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

"In 1915 provision was made for regulation of the extraction of natural gas not only to prevent excessive drainage as between producers but for the prevention of waste and for the protection of the interest of the public and the interest of all those having a right to take from a common reservoir.

"It was provided, Laws 1915, Ch. 197, § 4, 52 O.S. 1941, § 239, that when the full production from a common source of supply of natural gas is in excess of the market demands, a producer from such common source of supply may take therefrom only such proportion as may be marketed without waste, and in such proportion as the natural flow of the well or wells of such producer bears to the total natural flow of the field, having due regard to the acreage drained by each well; provided that the Corporation Commission may permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The statute provides that 'the said commission is authorized and directed * * * to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one source of supply as against another.'

"The succeeding Section 240 provided as follows:

> 'Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be un-

able to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part; but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. (Laws 1915, Ch. 197, Sec. 5.)'

"Obviously the impelling reason for discrimination in the taking of gas from one source of supply as against another rests in economic consideration and it is obvious that a practical and ready means of preventing such discrimination appears with control of the price of gas at its original source, or at the 'wellhead' in each of the particular fields. Reference to protection of the interest of all those having a right to produce gas from a common source of supply directs attention to the owners of the land overlying the gas and such interests as they have conveyed. Doubtless because of the technical and financial requirements in taking gas from its natural place, it has long been the general practice of landowners to lease the privilege of taking gas from under their lands and usually in consideration of a royalty of 1/8th or a particular part of the gas so taken or its equivalent marketed. Because of such technical and financial requirements in the development of a gas field, and necessary to the marketing and commercial use of gas, landowners are usually

compelled to enter into such leasing arrangements as the only means of securing an exploration and development of their gas resources. In the very nature of the product, landowners cannot accept delivery of gas so produced but must trust to producers for a proper handling of their share of the production. Such reserved or royalty interests are transferable and oftimes are sold in whole or in part.

"As suggested by Justice Rutledge in *Republic Nat. Gas Co.* v. *State, supra:*

> '* * * Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for conveyance to them from the well mouth. The competitive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monoply once success has been achieved in a particular field.
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> 'These peculiar qualities, moreover, have been reflected in the legal rights relating to the ownership of gas in place, as well as its extraction. They have been adapted to its nature and to that of the competitive struggle regarding it. Only a specialist in this branch of the law, which varies from state to state, can undertake to say with any reliable degree of precision what rights may be in particular situations. These difficulties, intensified by the competitive struggle for the product and the inadequacy of common-law ideas to control it, have forced both the states and the federal government to adopt extensive regulatory measures in recent years. This has been necessary both to conserve the public interest in this rapidly depleting natural resource and to secure fair adjustment of private rights in the industry. Rather than being

"a sacred, untouchable enclave of the common law, the field by its very nature lends itself especially to governmental intervention for such purposes. * * *"

"It is readily conceivable that in the course of development of a particular gas field, the ownership of producing and marketing facilities might become such, or be so combined, as to permit monopolistic practices. Under the circumstances prices for gas might be established having no relation to the market value of gas prevailing throughout the natural gas industry, and in other fields of commensurate development costs, and having no relation to the market value of other natural resources and products in competitive usage. On the other hand, a like result might obtain from economic warfare between competing producers and marketers. Under either of such circumstances prices might be so reduced that landowners or royalty holders or particular leaseholders would have their interests in the gas exhausted, dissipated and taken, without having received any reasonable compensation, and each suffer waste of a valuable reversion.

"Likewise the taking of gas under such circumstances would be inimical to the public interest. Like other natural resource, the subject of private ownership and exploitation, natural gas is a taxable resource. The tax is applied to the gross production and finally measured by the market value or price of the thing produced or reduced to personal possession. The taking of gas from a field, when the taking price of the gas is substantially lower than the price prevailing in other gas fields having commensurate production costs, and at prices having no relation to the market value of other of the natural resources of competitive usage, leads to an exhaustion of such gas without it having borne its fair share of taxation.

"Natural gas being exhaustible and of various valuable usage, the pubic interest extends to its conservation. Undoubtedly the price at which gas may be

obtained has an influence upon the ultimate purpose for which gas may be taken and used, and when the price for gas is substantially lower than its intrinsic value or lower than the market price of products of similar usage, a wasteful use of the gas is apt to occur.

"The relationship of price to conservation is suggested in the following expression from the concluding paragraph of the opinion in *Quinton Relief Oil & Gas Co.* v. *Corporation Commission*, 101 Okla. 164, 224 Pac. 156:

> '* * * Natural gas has twice the heating units of artificial gas, and taking into consideration the convenience of natural gas, it is intrinsically worth more than artificial gas; its market value being from $2 to $3 per 1,000 cubic feet. The amount of carbon black produced from 1,000 cubic feet of natural gas has a market value of about 10 cents. It, therefore, is obvious that the state, in the proper exercise of its police power and in conservation of so valuable a natural resource as natural gas, may prohibit the wasteful utilization of the same in the interest of the public welfare.'

"The impelling reason for or cause of discrimination in the taking of gas from one source of supply as against another, and the dilemma of the landowners growing out of private contract for the sale of gas without his interest being represented, is suggested in the following expression found in *Oklahoma Natural Gas Corp.* v. *State et al.*, 161 Okla. 104, 17 P. 2d 488:

> 'It would be a very efficient scheme to circumvent the proration law for a purchaser of gas operating by pipe line, which it has to have in order to successfuly handle gas, to take more gas in one place on a low cost than a rival operating on a higher purchase cost depending on contract, and by a system of reciprocity, allow its competitor in another pool to take more on the cheap rate. Thus it would be to the advantage of the

friendly pipe lines, and very much to the disadvantage of the unsuspecting landowner. Hence the necessity for putting somewhere the power to get a check upon this and as far as possible prevent it and equalize.'

"We are of the opinion that such considerations as above discussed occupied the legislative mind and motivated the enactment of the 1915 Act. In the 1915 Act the grant of power to the Corporation Commission to regulate the taking of natural gas from any source of supply, so as to protect the interest of all those having a right to produce therefrom, by necessary implication, includes the power to fix a minimum price on the gas as a condition of the taking, when found reasonably necessary to the accomplishment of that purpose. Likewise the grant of power to regulate, with directions that such power be exercised so as to prevent waste and protect the interest of the public, necessarily implies a power to fix prices as a condition of the taking of gas when otherwise, and because of prevailing prices, the public interest might suffer

"It is well settled that the state in exercise of its police power may regulate the taking of natural gas in the protection of the public interest and in preservation of private correlative rights. *Quinton Relief Oil & Gas Co.* v. *Corp. Comm., supra; Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 Pac. 2d 83 and *Republic Natural Gas Co.* v. *State, supra.*

"Such policy of the law making body of the state is expressed in the 1915 Act. In the nature of the subject matter the Legislature was compelled to leave to another agency of the state the duty of bringing about the result pointed out by the statute. As has been noted, under Section 239, *supra*, the Commission is charged with the duty of regulating the taking of gas from a common source of supply. The standard to guide the Commission in acting thereunder is the prevention of waste, the protection of the interest of the public, and the protection of the interest of all

those having a right to produce from such common source of supply. There is no invalid delegation of power by reason of uncertainty in the stated criterion and the Act does not confer arbitrary and uncontrolled powers. The price fixing feature of the Commission's order is but a means of securing the purpose for which the Act was passed, or is the instrumentality employed by the Commission to carry out the legislative will and it is limited in its use to the effecting of the expressed purpose. The validity of the order rests in its reasonableness and relevancy to the policy the Legislature was free to adopt.

"As we stated in *Nebbie* v. *New York*, 291 U.S. 502, 78 L. ed. 940:

> 'Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty.'

"See *Herrin* v. *Arnold*, 183 Okla. 392, 82 P. 2d 977.

"The Commission had before it the sworn testimony of persons who stated they were engineers of long experience in the production and marketing of natural gas. These witnesses gave testimony to the effect that studies had been made of the character of the natural gas in the Guymon-Hugoton field, and that studies had been made of the intrinsic value of natural gas or the value of gas as compared to the market value of other fuels in the relation to the heat units each would produce. With these factors considered, it was stated that the commercial heat value of the gas in the Guymon-Hugoton field, tested with consideration to its delivery and sale at a certain central point of commercial usage, and with subtraction of nominal transportation costs to such central point of commercial usage, is in excess of 10¢ per 1,000 cubic feet. It was stated that large blocks of acreage in the Guymon-

Hugoton field are under lease to a comparatively few companies who own the only pipe line outlets from the field, and that competition in the price of gas is not an element in the taking of gas in the field; that the gas is being taken from the field at prices at the wellhead ranging from 3.6¢ to 5¢ per 1,000 cubic feet measured on a basis of 2 pounds pressure per square inch above atmospheric pressure; that gas is being taken from the field and sold away from the field under unit of measurement of less than 2 pounds above atmospheric pressure. Various opinions were expressed by these witnesses who related long records of experience in the gas industry. It was stated that taking of gas from the field at prices of 3.6¢ to 5¢ per 1,000 cubic feet constituted economic waste and that such prices were conducive of physical waste and that to prevent economic and physical waste the minimum price for gas in the field should be 10¢ per 1,000 cubic feet.

"An employee of the State School Land Commission gave testimony to the effect that the State owned 49,600 acres of land located in Texas County, 30,160 acres of which was under lease with 6,099.92 acres being held as producing leaseholds; that the Land Office was receiving royalty from such productions on the basis of 4¢ per 1,000 cubic feet for gas at the wellhead, and in some instances on the basis of 5¢ at the wellhead and that one producer from a large acreage was offering to pay 3.34 cents.

"The testimony abundantly supports a conclusion that the conditions under which gas is being taken from the field is injurious to the interest of the public at large, and inimical to the interest of a substantial group such as landowners and others and is resulting in economic waste and conducive to physical waste. The testimony demonstrates that the price fixed as a condition of the further taking of gas from the field is reasonable and not beyond the requirements of the situation sought to be corrected, and will not result in discriminations.

"The Corporation Commission has heretofore exercised its power of fixing prices at which natural gas may be produced and taken. As early as 1920, after the prescribed notice and hearing, the Commission fixed the price of 9¢ per M.C.F. for gas in the Cushing field. And in 1944, acting specifically in view of the national emergency, the Commission, after notice and hearing, authorized the taking of natural gas for the manufacture of carbon black, but fixed the price to be paid for the gas so produced and used. And it was specified that the continued effectiveness of the permit should depend on the maintaining of the fixed price.

"In this connection we observe the following demonstrations of a well known rule of construction. In *Foot* v. *Town of Watonga*, 37 Okl. 43, 130 Pac. 597 (598) this court said:

> 'It is clear, under the Oklahoma statutes, that the license of a foreign insurance company expires on the last day of February next after its issue. Art. XIX of the Oklahoma Constitution and the Oklahoma statutes, hereinabove referred to, permit the construction that the payment of the gross premiums tax on or before the expiration of the license year on the last day of February is exacted for the privilege of doing business in the state during that license year and as a condition precedent to the issuance of a license for the ensuing year. Such has been the uniform and long-continued construction of the executive department charged with the administration of the statutes. The long-continued construction of a statute by a department of the government charged with its execution is entitled to great weight and should not be overturned without cogent reasons. The Legislature of Oklahoma has convened many times during this period of administrative construction without expressing its disapproval. That silence may be regarded as acquiescence in or approval of the administrative construction. Similar statutory provisions have been so construed.'

"Cities Service contends the order appealed from impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution. In *Interstate Natural Gas Company* v. *Federal Power Commission*, 67 S. Ct. 1482, 331 U.S. 682, 91 L. ed. 1742, in a case involving the jurisdiction of the Federal Power Commission, we note this expression:

> 'In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which the States are constitutionally competent to act. * * *
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> 'Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interest of conservation or of any other consideration of legitimate local concern.'

"Here the Corporation Commission has fixed a minimum price for gas in a natural common reservoir; such price to be applied at the wellhead as a condition of the taking. The regulation applies to the production of natural gas and though it results in an incidental effect upon the sale price for gas after the gas has been reduced to possession, the subsequent sale of the gas for delivery into another state does not brand the Commission order as a regulation of interstate commerce. The regulation is imposed before any operations of interstate commerce occur. In *Parker, Director of Agriculture et al.* v. *Brown*, 317 U.S. 341, it is said:

> '* * * No case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will in the normal course of business, sell and ship them in interstate commerce.'

"We do not perceive that the commerce clause of the Federal Constitution precludes the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom may have contracted or will contract for sale and delivery of his share of the production outside the state, or because a purchaser from such producer will sell and transport the gas in interstate commerce.

"The general order of the Commission fixing the minimum price for gas taken from the field as a part of the order requiring Cities Service to take ratably from the Peerless wells and as applied to Cities Service has the effect of requiring Cities Service to take ratably from Peerless and pay for the gas so taken at a price equal to the minimum price it must obtain for gas from its own wells offered at the well. If it may be said that under the price fixing order, Cities Service, with ownership of pipe line facilities, might take gas from its own wells and after payment of public charges and royalty claims on the gas on a basis of the minimum price fixed by the State, run the gas across the state line and there with profit make disposition of the gas at prices below the minimum fixed by the state, it does not follow that it has a right to use its pipe line facilities to gather gas from other wells on such basis, in otherwise disregard of price regulations, or that it may so use its wells as to effect a drainage from others without liability having relation to the price regulation.

"Undisputedly, the production from the Cities Service wells was resulting in drainage of the area where the Peerless wells were located and Cities Service offered to take ratably from the Peerless wells with its taking from its own wells. The effect was an offer to take the gas at the average price prevailing in the field or on the terms of a 'common purchasee' of gas in the field. Cities Service suffered no prejudice to its

rights in the fact that the Commission saw fit to investigate field conditions after dispute has arisen growing out of drainage from Peerless wells, or in the fact that a fixed price for gas was established. The order prohibiting Cities Service from taking gas from its wells except that it take ratably from the Peerless wells, insofar as it fixes the price for the gas so taken, is the same as that required of any purchaser of gas from the field. There occurs no greater invasion of Cities Service rights than depriving it of the right to drain gas from beneath the Peerless lease without paying for it. The overall effect of the order is to furnish a practical alternative, consistent with production by both Cities Service and Peerless, to protect Peerless from drainage by Cities Service.

"We find no basis in the due process and equal protection clauses of the Federal and State Constitutions for condemning the orders in their application to Cities Service.

"Cities Service complains of certain rulings in reference to certain pleadings filed and complains of the Commission's conduct and rulings in the course of the various hearings held leading up to the promulgation of the orders here under attack.

"The orders are legislative in character and subject in a large measure to the rules and principles by which the validity of statutes are determined. In the hearings preceding the orders, and not for violation thereof, the rules and principles of procedure obtaining in the enactment of a statute more nearly apply than the strict rules applicable to law courts.

"We have examined the record and find substantial evidence to support the Commission's findings and no error of law is committed.

"Phillips Petroleum Company in application to the Commission to vacate the orders introduced testimony to the effect that it owns oil and gas leases on several thousands of acres of land in the Guymon-Hugoton

field, and several producing gas wells thereon, and was presently taking several millions cubic feet of gas daily from such wells; that Phillips sells no gas produced from said field in the State of Oklahoma, but gathers gas from its wells through its own gathering system to a central point in the State of Texas where it processes the gas and extracts therefrom natural gasoline and other hydrocarbons and sells the residue gas; that it sells such residue gas to Panhandle Eastern Pipe Line Company at 4¢ per 1,000 cubic feet; that it has agreed to sell and deliver to Panhandle Eastern all of the gas it produces from 175,000 acres under lease in Texas County, subject to its right to extract natural gasoline and other liquid hydrocarbons from said gas prior to the delivery of such gas to Panhandle Eastern at the said central point in Texas.

"Phillips here adopts the brief of Cities Service and with enlargement of argument here present similar contentions concerning the authority of the Commission to make the orders appealed from and the constitutionality of the orders appealed from.

"Our discussion of the Cities Service appeal is here applicable. We find no basis in the due process and equal protection clause of the Federal and State Constitutions for condemning the orders appealed from in their application to Phillips.

"The orders appealed from are affirmed.

"Davison, C. J., Arnold, V. C. J., Corn and Johnson, JJ. Concur.

"Gibson, Luttrell, Halley and O'Neal, JJ. Dissent."

APPENDIX "D"

[DISSENTING OPINION]

"IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

"Cities Service Gas Company, a corporation,
Plaintiff in Error,

vs.

Peerless Oil and Gas Company, a corporation *et al.,*
Defendants in Error.

No. 32994

Phillips Petroleum Company, a corporation,
Plaintiff in Error,

vs.

State of Oklahoma *et al., Defendants in Error.*

No. 33006

HALIEY, J. (dissenting):

"There are two conclusions in the majority opinion in which I cannot concur. I cannot agree that the Corporation Commission has been given authority by the Legislature to make a general order fixing the price of gas for an entire gas field or common source of supply. I cannot agree that the Commission has the authority to require Cities Service to pay to Peerless a price for gas produced in the Guymon-Hugoton field,

substantially above the current market price prevailing in that field. It is admitted that if the general price-fixing order for the entire field is authorized, then the price ordered paid to Peerless would necessarily follow the general price-fixing order is not within the powers granted to the Corporation Commission, and that Cities Service should only be required to pay Peerless the current market price prevailing in that field.

"The majority opinion does not claim that general price-fixing authority for a common source of supply has been expressly granted to the Commission. It does conclude that such authority for a common source of supply has been expressly granted to the Commission. It does conclude that such authority is necessarily implied as a means of carrying out the express powers given the Commission to regulate the production of gas, the prevention of waste, the protection of co-equal rights, and the interests of the state and its citizens. These are all worthy objectives. The conservation of a great natural resource challenges the best efforts of all, but does not warrant the Corporation Commission in exercising powers not delegated to it by the Oklahoma Legislature.

"The statutes granting authority to the Corporation Commission to regulate the production of gas are generally referred to as the Acts of 1913 and 1915. The applicable portion of the 1913 Act, Ch. 198, Page 440, Sec. 3 (Sec. 233, Title 52, O.S. 1941), is as follows:

> 'Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree, at such a price and upon such terms as may be fixed by the Corporation Commission after notice

and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas.'

"In 1915 the following Act, being Ch. 197, Sec. 5 (Sec. 240, Title 52, O.S. 1941), was enacted:

'Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or, in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have the authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.'

"Sec. 2, Ch. 197, Session Laws of 1915 (Sec. 237, Title 52, O.S. 1941) defines the term 'waste' as follows:

'* * * That the term "waste," as used herein, in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn, and the wasteful utilization of such gas.'

"The foregoing definition of waste was enlarged by the Legislature in 1933 and in 1935, and the term 'wasteful utilization' was changed to 'inefficient utilization.'

"It is a cardinal rule of statutory construction that the primary aim is to arrive at the intention of the Legislature. This ancient rule was announced in *U. S. v. Temple*, 105 U.S. 97, 26 L. ed. 967, in the following words:

'Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction, for the purpose of either limiting or extending its operation. When the language is plain, we have no right to insert words or phrases so as to incorporate in the statute a new and distinct provision.'

"Again in *Russett School District No. C-8 v. Askew*, 193 Okla. 102, 141 P. 2d 575, this court stated in the body of the opinion:

'As has often been said, the cardinal rule in such cases is to ascertain and give effect to the legislative intention. That intention is to be first sought in the language of the statute itself, and if it is there plainly expressed, it must be followed without further inquiry.'

"The majority opinion correctly states the rule of construction to the effect that where an officer or government agency charged with the duty of administer-

ing a law construes the law and such construction is acquiesced in for a long period of time, such construction should be given great weight by the courts when called upon to construe such law. However, I am unable to agree that the record before us discloses that the Corporation Commission, charged with the duty of administering the law relating to the production of gas, has construed the regulatory Acts as giving it the authority to fix the price of gas produced from a reservoir, except where seller and buyer fail to agree upon a price, or that such construction has been long acquiesced in.

"During the more than thirty years that the Commission has been charged with the authority to regulate the production of gas, there is shown only a single instance where it fixed the price of gas for a field or common source of supply. In 1920 the Oklahoma Natural Gas Co. was taking gas from the Cushing field in Creek County at 6¢ per MCF, and selling it to consumers. The producers were threatening to disconnect their wells. They appealed to the Commission to fix a higher price. The Commission entered an order fixing the price for the entire Cushing field at 10¢ per MCF. This order was not appealed from, and it is not shown how long it was effective. There had evidently been a previous agreement as to price. It was not shown whether all, or what per cent, of the producers joined in the application to the Commission.

"In 1924 the Commission entered an order prohibting the use of gas for the manufacture of carbon black. The order was appealed from to this court, which affirmed the order on the ground that the use complained of was a 'wasteful utilization' of gas. The case is reported as *Quinton Relief Oil & Gas Co.* v. *Commission*, 101 Okla. 164, 224 P. 156. The court held that Ch. 197, Session Laws of 1915, conferring upon the Commission the power to make rules and regulations to prevent the 'wasteful utilization' of

natural gas, also gave that body the power to define what uses are within the scope of that term.

"In 1937, in the *Application of Jackson*, 179 Okla. 577, 66 P. 2d 1101, this court upheld an order authorizing the use of gas for the manufacture of carbon black as not being a 'wasteful utilization.' Reference is made to the *Quinton case* above, where such use was held to be wasteful, and it is held that if the Commission could determine what is 'wasteful utilization,' it could also determine what use is not wasteful.

"In 1944, the War Production Board requested the Commission to enter an order granting authority to use natural gas for the manufacture of carbon black in the Guymon-Hugoton field. The order was issued and the price to be paid fixed at 5¢ per MCF, being approximately the market price in the field. The order was not appealed from. It was an emergency war order.

"The above record does not support the claim that the Corporation Commission has construed the statutes mentioned as giving it the power to fix the price of gas for an entire field. During the years these statutes have been in effect, most of the major gas fields of Oklahoma have been discovered and developed. I agree that 'implied powers' flow from a grant of express powers, and that they are those powers necessary or incidental to the exercise of the express powers. The power to fix prices is a drastic one. In *H. F. Wilcox Oil & Gas Co.* v. *Walker*, 169 Okla. 33, 32 P. 2d 1044, this court announced the rule relative to implied powers as follows:

> 'It is well established that the authority of the Commission is definitely limited to the power expressly or by necessary implication granted to it by the Constitution and the statutes.'

"That case involved the proration of oil, but the same principle is applicable to the authority of the Commission with respect to gas.

"The majority opinion quotes extensively from the dissenting opinion by Justice Rutledge in the case of *Republic Natural Gas Co.* v. *State et al.*, 334 U.S. 62, 92 L. ed. 1212. However reasonable and persuasive that dissenting opinion, concurred in by three other members of the court, may be, it is not the law.

"If it had been the intention of our Legislature to grant to the Commission the power to fix the price of gas at the wellhead for an entire field, the addition or inclusion of a few simple words in the statutes granting regulatory authority to the Commission would have settled the matter beyond doubt. Why did the Legislature expressly grant authority to fix the price of gas where seller and buyer fail to agree, and fail completely to grant such authority in the vastly wider and more important field of fixing the price over an entire field or common source of supply? It is incredible that the Legislature would expressly grant such authority in a narrow field and leave it to be implied in a vastly wider and more important area. A gas field, or common source of supply, is the basic unit to which conservation orders are generally applicable. The order of the Commission, which is approved by the majority opinion, means that the Commission may fix the price of gas in every field in the state. The production of oil is under the jurisdiction of the Commission under similar statutes authorizing the prevention of waste, the protection of co-equal rights, and conservation, yet the Commission has never asserted that it had the power to fix the price of oil. It is true that oil may be stored and transported in various ways, while gas cannot be stored and must be transported by pipe line.

"It is not my view that conditions do not exist or may not hereafter arise in the Guymon-Hugoton field which may justify drastic regulatory measures by the Commission. The producers who have no pipe line facilities are wholly dependent upon those who have such outlets. These facts have prompted the Legislature to give the Commission express powers to pro-

hibit discrimination and to protect the interests of all parties. The land owner is especially interested because he cannot receive, store or distribute his share of the gas produced from his land, but is dependent upon the limited number of purchasers in the field. It may be that the royalty owners are not receiving their proper share of the proceeds of gas produced and marketed from their land. If they are not receiving their just shares under the terms of their lease contracts, they should seek relief in the courts and not before the Corporation Commission. It may be that gas selling at a price lower than its intrinsic value, but this does not justify the Commission in fixing the price until the Legislature has given it such power by clear and unmistakable terms or by necessary implication.

"The evidence shows that no physical waste is being practiced in the Guymon-Hugoton field. The only venting of gas is in the drilling and completion of wells, which is expressly allowed by statute. There is no claim of wasteful utilization. The gas is being sold for fuel, light, or power—all useful purposes.

"The evidence as to the effect of price fixing to prevent economic waste is too vague and nebulous to justify serious consideration. It is based largely upon the comparative values of competitive fuels, such as coal and oil, and if followed in the Guymon-Hugoton field, the price of gas there would be so high that producers could not possibly compete with gas produced from other fields in Oklahoma, or in other states; and if the order of the Corporation Commission is made effective, there might result a forced shut-down of the entire field, depriving the state and its interested citizens of their right to compete in the open market in disposing of their gas.

"The price fixed by the Commission, where seller and buyer are unable to agree upon a price, should be the current market price prevailing in the field. Any other price would be unfair, discriminatory, and inequitable.

"If the Legislature had intended to give the Corporation Commission authority to fix the price of natural gas in every gas field in the state, such authority would have been expressly given. Failure to express such intention is proof that no such intention existed. To read into the statutes such drastic power is nothing short of legislation by judicial construction, and for the foregoing reasons I respectfully dissent.

APPENDIX "E"

"IN THE SUPREME COURT OF THE
STATE OF KANSAS

No. 37,921

"Kansas-Nebraska Natural Gas Company, Inc., a Corporation, Appellant, v. State Corporation Commission of the State of Kansas, Jeff A. Robertson, Chairman and Commissioner, DeWitt M. Stiles, Commissioner, and Charles M. Warren, Commissioner, as members of the State Corporation Commission of the State of Kansas, and their respective successors in office, Appellees.

Appeal from Finney district court: Ray H. Calihan, Judge. Opinion filed October 7, 1950. Affirmed.

No. 37,920

"Northern Natural Gas Company, a Corporation, Appellant v. The State Corporation Commission of the State of Kansas and Jeff A. Robertson, Chairman, DeWitt M. Stiles, Member, Charles M. Warren, Member of said Commission, and their successors in office, Appellees.

Appeal from Finney district court; Ray H. Calihan, Judge. Opinion filed October 7, 1950. Affirmed.

No. 37,924

"Panhandle Eastern Pipe Line Company, a corporation, Appellant v. The State Corporation Commission of the State of Kansas, Jeff A. Robertson, Chairman and Commissioner, DeWitt M. Stiles, Commissioner and Charles M. Warren, Commissioner, as members of the State Corporation Commission of the State of Kansas, and their respective successors in office, Appellees.

Appeal from Seward district court; Ray H. Calihan, judge *pro tem.* Opinion filed October 7, 1950. Affirmed.

"SYLLABUS BY THE COURT

"1. Under the Federal Natural Gas Act of June 21, 1938 (Ch. 556, 52 Stat. 821, 15 U.S.C.A. § 717) the jurisdiction of the Federal Power Commission does not extend to intrastate transportation or sale of natural gas, or to the local distribution of natural gas, or to the facilities used for such distribution, or to the production or gathering of natural gas.

"2. In this state the production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state. (Following *La Harpe* v. *Gas Co.*, 69 Kan. 97, 76 Pac. 448.)

"3. The dominant purpose of our statutes pertaining to the production and conservation of natural gas. (G.S. 1947 Supp. 55-701 to 55-713) is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but for such purposes as would constitute waste.

"4. The statute is also designed to protect the relative rights of the owners of real property from which natural gas is produced from a common source of supply.

"5. The statutes place authority in the State Corporation Commission, on proper application made to it, to hear the evidence and to make appropriate orders to prevent waste of natural gas in its production, distribution or sale in this state, and to so regulate the taking of natural gas from a common source of supply as to prevent inequitable or unfair taking and to prevent unreasonable discrimination in favor of or against any producer of gas from such common source of supply.

"6. Our statute gives the Corporation Commission authority to make an order fixing a minimum wellhead price for natural gas taken from a common source of supply if the evidence before the Commission justifies its conclusion that such an order is necessary in order to prevent waste and to secure the relative rights of owners of real property from which gas is produced from a common source of supply.

"7. Such an order, if applied to the Hugoton gas field in Kansas, is not void as being in violation of section 17, article 2, of our Constitution.

N. F. Cosgrove, of Topeka, argued the cause, and James D. Conway, of Hastings, Nebraska, and D. B. Lang, of Scott City, were with him on the briefs for the appellant Kansas-Nebraska Natural Gas Company, Inc.

Mark H. Adams, of Wichita, argued the cause, and Lawrence I. Shaw, of Omaha, Nebraska, and A. M. Fleming, of Garden City, were with him on the briefs for the appellant Northern Natural Gas Company.

Louis R. Gates, of Kansas City, argued the cause, and Mark H. Adams, of Wichita, and Edw. H. Lange,

of Kansas City, Missouri, were with him on the briefs for the appellant Panhandle Eastern Pipe Line Company.

Jay Kyle, General Counsel, State Corporation Commission of Topeka; R. C. Woodward, Special Counsel, of El Dorado, and Howard T. Fleeson and Dale H. Stuckey, both of Wichita, of Counsel, argued the cause and were on the briefs for the appellees.

"The opinion of the court was delivered by

"HARVEY, C. J.: These consolidated appeals are from judgments of the district court, which upon review of an interim order of the State Corporation Commission fixing a minimum price of eight cents per thousand feet at the well head for natural gas taken from the Hugoton gas field, found the same lawful and reasonable and directed their enforcement.

"What is commonly spoken of as the Hugoton gas field is approximately 60 miles long and 40 miles wide, covering parts of several counties situated in the southwest corner of Kansas and extending south across Texas County, Oklahoma, and into one or more counties of northern Texas. We are concerned here with only that part of the Hugoton gas field which is in Kansas. It is said to be the largest known reservoir of natural gas and is found at a depth of from about 2600 to 2900 feet in a porous formation about 50 feet thick. It was discovered near Hugoton in 1922, but it was not until about 1929 that its possibilities for domestic and industrial purposes had been fully realized. At the time of the hearing before the Commission about 1000 wells had been drilled and pipe lines had been laid to convey the gas to many cities and communities in Kansas and also in Colorado, Nebraska and states north, as far as Minneapolis, and east to cities in Michigan and points between. Several million feet of natural gas per day were being taken from the wells. The supply was greatly in excess of the market demands. Many of the producers had not been able to market their gas through any of the pipe

lines. Prices being paid to producers varied from four to eight cents per thousand cubic feet. There was really no open market for it—the producers had to accept what the pipe line companies would offer to pay.

"On February 6, 1948, the Southwest Kansas Royalty Owners Association, a non-profit corporation composed of about 1200 members and eighteen individuals, each the owner of mineral interests in real property in the Hugoton gas field, filed a petition with the Corporation Commission which alleged that under the land owned by the petitioners and others in the natural gas reservoir and source of supply known as the Hugoton gas field, which constitutes a natural resource which should be conserved and the waste of which should be prohibited by the Commission, and stated particulars not necessary to be noted here in view of an amended petition in which it was alleged the preventable waste existed. The petition was received and given docket No. 35,154-C (C-1868 Conservation Division). Each of the appellants here intervened and filed a written protest, and the Cities Service Gas Company filed a motion to dismiss. After due notice to all interested parties a pretrial hearing was had July 19 and 20, 1948, of oral and written arguments as to the legal questions involved, including jurisdiction of the Commission, during which the petitioners were given leave to file an amended petition, and a date was fixed for the hearing of evidence, the Commission reserving its ruling upon the legal questions. The amended petition was filed August 4, 1948. Hearings were had from October 18th through the 22nd and December 13th through the 15th at which evidence was offered. On February 18, 1949, the commission filed its interim order, which sufficiently sets forth the questions presented by the amended petition and the ruling of the commission thereon, the pertinent portions of which are as follows:

"The interim order recited the consideration of the evidence and the arguments and briefs of counsel, the

filing of the petition and amended petition, and stated that the petitions, as amended, requested that the Commission:

'(a) Institute an investigation into the issues raised by the Amended Petition,

'(b) Establish a uniform minimum price at which gas may be taken out of the producing structures in the Hugoton Field in Kansas of not less than 10 cents per M.C.F.,

'(c) Require all purchasers and takers of gas in and from the Hugoton Field to take ratably from each completed well in the field,

'(d) Establish atmospheric pressure as the base for measurement of the natural gas taken from the Hugoton Field.'

"Paragraph 2 recites the hearings and notices therefor, and

'At the conclusion of these proceedings, all of the questions of fact and of law were taken under advisement by the Commission.

'3. Gas Conservation Rule 822-201 of this Commission is state-wide in its application. Among other terms, it defines "Gas, Cubic Foot" as the volume of gas required to fill one cubic foot of space at a temperature of 60 degrees Fahrenheit and under an absolute pressure of 16.4 pounds. To provide for a different pressure base in the Hugoton Basic Order would require amendment of this state-wide rule. These proceedings, noticed as applicable only to the Kansas Hugoton Field, are not competent to affect an amendment to a state-wide rule or regulation. The Commission, having so limited this inquiry, is without jurisdiction here to establish a pressure base differing from the base set forth in the above noted Gas Conservation Rule. However, issues fairly raised in this proceeding make it appear to the Commis-

sion that an investigation on a state-wide basis should be initiated to determine whether Rule 822-201 should be amended and the Commission is this day entering its order in Docket No. 34780-C, (C-1825) instituting such an investigation.

'4. The Commission has jurisdiction and authority to determine the value of gas at the wellhead in the Kansas Hugoton Field and to require that no gas may be taken out of the producing structures unless the takers of such gas attribute such value to the gas for purposes of payment to the producer, landowner, lease-holder, or royalty owner, and to fix a minimum wellhead price at which natural gas may be taken from the Kansas Hugoton Field, when such determination and requirement or fixing of price is a necessary or appropriate means of giving effect to the intent and purpose of the statutes relating to the production and conservation of natural gas (G. S., 1947 Supp., 55-701 to 55-713, incl.). * * *

'5. The record in this proceeding does not explore fully all the factors which the Commission deems it necessary to consider in arriving at a final determination as to the value of gas at the wellhead in the Kansas Hugoton Field or as to what minimum wellhead price should be fixed for the sale of natural gas. To secure the further information it requires, the Commission is this date, on its own motion, entering its order instituting an investigation in Docket No. C-164. However, undisputed evidence now before the Commission in this record establishes that in order to give effect to all the intents and purposes of the statutes relating to production and conservation of natural gas, it is *necessay* and appropriate for the Commission to determine, pending completion of the investigation today instituted in Docket No. C-164, that the fair and reasonable value of natural gas at the wellhead in the Hugoton Field is at least eight cents per thousand cubic feet, and

that the taking of gas out of the field without attributing such value thereto for purposes of payment to the producers, landowners and royalty owners is not conducive to the fulfillment of the intents and purposes of the statute relating to the production and conservation of natural gas and should be prevented. . . .

'(6) No person, firm or corporation taking gas from the Hugoton Field should take or cause such gas to be taken out of the producing structures or formations thereof without attributing thereto for purposes of payment to the producers, landowners, leaseowners and royalty owners a fair and reasonable value at the wellhead of at least eight cents per thousand cubic feet of gas.'

"Paragraph 7 pertains to the keeping of books of gas taken from the field and provides:

'Pending completion of the investigation in Docket No. C-164 instituted today, which investigation may result in modification of the determination of the value of gas.' * * *

"It further provides that those taking the gas should be required to make actual payments of the differences to the persons entitled thereto, or deposit or impound the funds in their own treasury or give bond for such payment.

'8. It is not established in the record now considered that ratable-taking within the meaning of the statutes above referred to is not being accomplished. It has been strongly urged by the applicants herein that the Basic Order for the Kansas Hugoton Field does not require purchasers within that field to take ratably from each developed well. The Commission's desire to fulfill completely the purpose and intent of the laws relating to the production and conservation of natural gas prompts it to explore more fully the conditions and circumstances related to applicants' con-

tentions. It is therefore, entering its order in Docket No. C-164 instituting an investigation to determine whether the Basic Proration Order, applicable to the Hugoton Field, should be amended to further insure ratable-taking within the meaning of the gas conservation laws.

'IT IS, THEREFORE, BY THE COMMISSION ORDERED: That from and after the effective date of this order and until the further order of the Commission in this docket or in Docket No. C-164 following or in the course of the investigation today instituted:

'1. No person, firm or corporation taking gas from the Hugoton Field shall take or cause such gas to be taken out of the producing structures or formations thereof without attributing thereto for purposes of payment to the producers, landowners, leaseowners and royalty owners a fair and reasonable value at the wellhead of not less than eight cents per thousand cubic feet. * * *

'4. This order shall take effect and be enforced from and after 12:01 a.m., March 1, 1949, and shall remain in force and effect until the further order of this Commission.

'The Commission hereby retains jurisdiction of this cause and of the subject matter and the parties hereto for such other and further orders as the circumstances may require.'

"On the date the Commission filed its interim order in docket No. 35-154-C (C-1868) it made an order in docket No. C-164 by which it determined, on the Commission's own motion, that an investigation should be instituted to develop and explore all the facts and circumstances pertinent to a determination of the value of gas at the wellhead in the Kansas Hugoton gas field and as to what minimum wellhead price should be fixed for the sale of such gas, hearings pursuant to such investigation to be held upon proper

notice at such times and places as the Commission might order.

"On February 23, 1949, the Commission filed its memorandum opinion, setting out its reason for making the interim order. This included a history of the proceeding, of our legislative history relating to the production and conservation of natural gas, and the history of the development of the Hugoton gas field, and found authority for its interim order in our statute (G.S. 1947 Supp. 55-701 to 55-713). The Commission on the same date issued an order in docket No. C-164 by which, on its own motion, it instituted an investigation, with hearings to be held thereon after due notice, for the purpose of determining whether existing orders, rules and regulations were sufficient in scope to require ratable taking from each and every well in the field, and whether, under existing orders, rules and regulations, it was necessary to make amendments, alterations and changes therein for the protection of correlative rights, conservation of natural gas, orderly development of the field, ratable taking, and for such other purposes as might be deemed *ncessary*. On the same date the Commission, on its own motion, made an order in docket No. 34,780-C (C-1825) for further consideration of the unit of measurement known as 'Gas Cubic Foot,' defined in rule 822-201 of the general rules and regulations for the conservation of crude oil and natural gas.

"Each of the appellants filed a motion for rehearing, which motions were considered by the Commission and overruled. Whereupon the appellants filed their respective actions for judicial review of the interim order of the Commission by the district court, as provided in G.S. 1947 Supp. 55-606, as authorized by 55-707. These actions were heard together by the district court on September 12 and 13, 1949, and taken under advisement by the court. On September 24, 1949, the district court made its findings and judgment in each of the actions as follow. The court found:

'1. That the Interim Order entered by the State Corporation Commission of the State of Kansas, one of the defendants herein, in its Docket 35154-C (C-1868) on the 18th day of February, 1949, was a lawful and reasonable order:

'2. That said Interim Order here before this court on a petition for review under G.S. 1947 Supp., 55-707, should be upheld and sustained.

'IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that said Interim Order entered by The State Corporation Commission of the State of Kansas, one of the defendants herein, in its Docket 35154-C (C-1868) on the 18th day of February, 1949, be and the same is hereby upheld and sustained. That the costs of review in this court be assessed to the plaintiff.

'RAY H. CALLIHAN, *District Judge.*'

"Each of the plaintiffs filed a motion for a new trial in the district court, which was considered by the court and overruled, and each of them timely appealed to this court, where the cases were consolidated for hearing.

"We turn now to the consideration of the legal questions presented. Appellants contend that since they are engaged in the business of transporting natural gas in interstate commerce they are governed wholly by the Federal Natural Gas Act of June 21, 1938 (Ch. 556, 52 Stat. 821, 15 U.S.C.A. § 717). This is 'AN ACT TO regulate the transportation and sale of natural gas in interstate commerce, and for other purposes.' It first declares the 'necessity for regulation of natural-gas companies,' contains a declaration of policy, and specifies the application of its provisions with exemptions thereto. The pertinent portions read:

'SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and

other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

'(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.*' (Emphasis supplied.)

"The question appears to have been settled in *Federal Power Com'n* v. *Panhandle Eastern Pipe Line Co.*, 172 F. 2d 57. There Panhandle (the appellant here in No. 37-924) in September, 1948, organized the Hugoton Producing Company, transferred to it gas leases on 97,000 acres of land in the Hugoton gas field in Kansas, reserving the option to purchase gas produced therefrom after a date named, paid Hugoton $675,000 in cash and took back from it all of its outstanding capital stock, which it undertook to distribute in dividends to its stockholders. The Federal Power Commission sued to enjoin the transfer because its approval of the transaction had not been obtained. From an adverse decision in the district court it appealed. The United States Circuit Court of Appeals, Third Circuit, affirmed, and in the opinion (by Goodrich) used the following language:

'The controversy here arises out of the statute known as the Natural Gas Act passed in 1938.

That statute by its first section declares that federal regulation in the matters of transportation of *naural* gas and the sale thereof in interstate and foreign commerce is necessary in the public interest. There is no doubt that Panhandle is transporting and selling natural gas in interstate commerce and that under section 1 of the Act such transportation and sale by the company are subject to its provisions. The last sentence of the first section of the statute, however, carves out from the subject matter to be regulated a very important exception. The words are: "* * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of the natural gas." 15 U.S.C.A. § 717(b). * * *

'That there is a connection between the handling of matters in a local gas field and interstate transportation and sale of gas cannot be denied. No doubt Congress could have gone much further than it did in fixing the scope of federal regulation. But it clearly and intentionally drew a line short of where it could have gone.'

"On *certiorari* this was affirmed in *Federal Power Com'n* v. *Panhandle Co.*, 337 U.S. 498, 69 S. Ct. 1251, 93 L. Ed. 1949, where it was held:

'1. Section 1(b) of the Natural Gas Act, excluding "the production or gathering of natural gas" from the Commission's jurisdiction, left the transfer of gas leases to state regulation and outside the scope of the Commission's regulatory powers. Pp. 502-505.'

"In the opinion (pp. 509-513) it was said:

'The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred

because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. (See, for example, Kansas Gen. Stat. §§ 55-701 to 55-713 (1947 Supp.); Mich. Stat. Ann., c. 97, §§ 13.138(1)-13.140(10) Supp. 1947); Okla. Stat. Ann., tit. 52, c. 3, §§ 81-247; Texas Rev. Civ. Stat., tit. 102, Art. 6008 *et seq.* (Vernon, 1925, with Supp. 1948); La. Gen. Stat. §§ 4766-4826.2.) The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views.'

"These decisions have not been set aside or modified. From them and from the statute itself it is clear that the Federal Natural Gas Act has no application to intrastate transportation or sale of natural gas, or to its local distribution, or to its production, or gathering. Certainly it was not designed to limit or destroy the authority of states in which natural gas is found to conserve natural gas and to prevent waste in its production, gathering, distribution or sale. Congress made it clear such a result would not follow, and in doing so took cognizance of the specific Kansas statute here involved and of statutes of other states designed to conserve natural gas and to prevent waste in its production, gathering, distribution or sale.

"Appellants contend the legislature has not given the Commission authority to fix a wellhead price for natural gas. We wish to make it clear that appellants do not contend the state has no authority to fix such

a price when it deems such action necessary to conserve natural gas, by a direct act of the legislature, or by an act specifically authorizing the Commission to do so. Indeed, we interpret their position as conceding the state has such authority. Hence, there is no purpose or necessity in discussing such authority here. We do no more than refer to the fact that as early as 1904, in *La Harpe* v. *Gas Co.*; 69 Kan. 97, 76 Pac. 448, it was held:

> 'The production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state.'

"That doctrine has inhered in our subsequent statutes and decisions.

"Our first statute dealing specifically with 'the production and conservation of natural gas' was enacted in 1935 (Ch. 213, Laws 1935) and was embodied in our General Statutes of 1935 as sections 55-701 to 55-711. The statute was rewritten in 1945 (Ch. 233, Laws 1945) and now appears in G.S. 1947 Supp. as sections 55-701 to 55-713. The pertinent portions of the statute may be quoted or summarized as follows:

> 'That the production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited. (G.S. 1947 Supp. 55-701.)
>
> 'That the term "waste" as herein used, in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic as used in this act, shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or a liquid substance. The term "common source of supply" wherever used in this act, shall include that portion lying within this state

of any gas reservoir lying partly within and partly without this state. The term "commission" as used herein shall mean the state corporation commission of the state of Kansas, its successors, or such other commission or board as may hereafter be vested with jurisdiction over the subject matter of this act. (G.S. 1947 Supp. 55-792.)

"That whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction, then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizance drainage between separately-owned, developed leases or parts thereof: The commission shall so regulate the taking of natural gas from any and all such common sources of supply within the state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. * * * (G.S. 1947 Supp. 55-703.)

> 'The commission shall promulgate such rules and regulations as may be necessary for the prevention of waste as defined by this act, the protection of all water, oil or gas-bearing strata encountered in any well drilled in such common source of supply, ascertaining the several factors entering into the determination of the productive capacity of each well, the total productive capacity of all wells in the common source of supply, the establishment of such other standard or standards as the commission may find proper to determine the productive capacity of each well and of all wells in such common source of supply, and as the commission may find necessary and proper to carry out the spirit and purpose of this act: * * *.' (G.S. 1947 Supp. 55-704.)

"Other provisions of the statute pertain to procedure and other details which are not in question.

"The dominant purpose of this statute is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but also in its production for such purposes as would constitute waste. In order that the term 'waste' should not be narrowly construed the statute makes it clear that it is to include economic, underground and surface waste, and the term 'economic waste' is defined. These provisions were for the purpose, if necessary, of expanding the meaning of the term 'waste' and not for the purpose of limiting such meaning. The statute also deals with the rights of owners of property under which there is a common source of supply of natural gas. We think the statute is broad enough to authorize the Commission to make any rule or order to prohibit waste of natural gas, upon proper application made to it, if the evidence discloses waste in the manner or conditions or purpose of its production. It is true the statute did not specifically authorize the Commission to fix a wellhead minimum price to be paid for gas produced. It did not forbid the Commission to do so if and when the evidence disclosed the fixing

of such price would tend to prevent waste and the inequitable and unfair taking of gas from a common source of supply. Hence, the legal question presented by appellants, that the statute did not authorize the Commission to make the interim order complained of, is not well taken.

"We shall not attempt a detailed recital of the evidence upon which the Commission apparently relied in fixing a minimum wellhead price of eights cents per thousand cubic feet of gas to be taken from the Hugoton field. The testimony is lengthy and explained or illustrated by numerous maps, charts and tables of figures. The witnesses who testified upon the subject were well educated along those lines and had years of experience in production and marketing of gas and economics as applied thereto, and were outstanding writers upon that subject. Their qualifications were not questioned, neither was there any contention that any of them in any way was biased or prejudiced. They gave it as their judgment that one of the best ways to conserve gas and prevent waste in the Hugoton gas field is to fix a minimum wellhead price for gas. The lowest figure stated by any of them was eight cents per thousand cubic feet. Others put the minimum figure higher. This evidence was not contradicted by the appellants. They appear to have presented their defense before the Commission and the trial court, and their appeal here is upon legal questions and not upon questions of fact. We think the Commission was justified in finding upon the evidence before it that to prevent waste of gas in the Hugoton field a minimum wellhead price of eights cents per thousand cubic feet was justified, and that the trial court correctly found the order of the Commission in this respect to be reasonable. We take note of the fact that the Commission did not regard this as a final order. The order was made upon the evidence then before the Commission, which on its own motion transferred the matter to docket No. C-164 for further study.

"Appellants contend the order of the Commission constitutes a special law, being limited solely to the Kansas Hugoton gas field, and therefore violates section 17, article 2, of our Constitution, which reads:

> 'All laws of a general nature shall have a uniform operation throughout the state; and in all cases where a general law can be made applicable, no special law shall be enacted; and whether or not a law enacted is repugnant to this provision of the Constitution shall be construed and determined by the courts of the state.'

"This provision of our constitution was intended to apply to laws enacted by the state legislature. Appellants contend it has been held to apply to any law purporting to be made by public authority and cite some authorities from other jurisdictions tending to support that view. No case in Kansas is cited as supporting that view under our constitution. But we need not decide that question here. The court takes judicial notice of the fact that the Hugoton gas field in Kansas differs in many respects from any other gas field in the state. We think the order is not void because it applies only to the Hugoton gas field.

"Appellants contend the order contravenes the interstate compact to conserve oil and gas (G.S. 1935, 55-803 to 55-808 incl.) as extended. The point is not well taken. The declared purpose of the compact, as stated in Article II thereof, is 'to conserve oil and gas by the prevention of physical waste thereof from any cause.' And in Article III, after listing six particulars in which the states joining in the compact agreed to enact laws or to continue them in force for the prevention of waste, contains this language: 'The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.' We see nothing in the compact that would prevent our state from enacting the statutes under which the Commission operated.

"Appellants contend the interim order complained of violates their existing contracts for the purpose of gas. The point is not well taken. Appellants obtain the gas which they pass through their pipe lines in one of two ways—by purchase or by production. The standard form gas purchase contract used by the appellants in the Hugoton gas field contains this clause:

> 'Contract subject to present and future orders, rules and regulations of duly constituted authorities having jurisdiction.'

"By this the parties anticipated modification of the contract by a duly constituted authority having jurisdiction. Under our previous holdings herein the Corporation Commission is such a body. The appellants get some of the gas from wells under ordinary gas leases with the owners of real property. These leases do not attempt to fix any price for the lessor's royalty. The pertinent provision in the lease reads:

> 'The leases shall monthly pay lessor as royalty on gas marketed from each well where gas only is found, one-eighth (⅛) of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then one-eighth (⅛) of its market value at the well.'

"The result is the appellants have no prior contracts which will be violated by the order complained of here.

"Other points argued by the appellants have been considered and found to be without substantial merit.

"The judgment of the trial court is affirmed.

"PRICE, J. (dissenting): I am unable to agree to the result reached in the opinion written for the court and will state my views very briefly.

"In doing so I do not propose to debate the merits of the question whether the Commission should or should not have power to fix the price of natural gas at the *welhead* in the Hugoton or any other gas field.

As I see it the question is—*does it possess such power under the statute?* The Commission has only such powers as have been conferred upon it by the Legislature. Nowhere in the provisions of G.S. 1947 Supp. 55-701, 702, 703 and 704 do I find any such authority granted. In fact, at the 1947 session of the Legislature H.B. 129 specifically empowered the Commission '* * * to fix a minimum price at which gas may be purchased at the wellhead. * * *.' It is true that this bill, which passed both Houses of the Legislature was vetoed by the Governor and therefore did not become a part of our law—but, in my opinion it was definitely a legislative recognition of the fact that no such power previously existed. In the absence of such statutory authority I am unwilling to say that an administrative agency, board or commission possesses the power to do what was done here and for that reason I think the order of the Commission was unlawful and should be set aside.

"WENDELL, J., concurring in J. Price's dissent."